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A N

A N S W E R

TO

THE PAMPHLET OF MR. JOHN A. LOWELL,

ENTITLED

"REPLY TO A PAMPHLET RECENTLY CIRCULATED BY
MR. EDWARD BROOKS."

WITH

NEW FACTS AND FURTHER PROOFS,

BY

EDWARD BROOKS.

BOSTON:

1851.

EASTBURN'S PRESS.

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Sally

P R E F A C E.

The question will naturally be asked, Why does this book come out at so late a day, and in Mr. Lowell's absence ?

His pamphlet made its appearance about three years since. It contained statements, very surprising to me, for their boldness, and the entire want of proof to support them. It seemed, that their author was content to rely, mainly, on personal credit and standing in society.

I had made some little progress in preparing such an answer as I thought suitable, when it struck me, that some of the points, on which I had been unexpectedly contradicted, were, perhaps, capable, on diligent search, of being set at rest, with all intelligent and unprejudiced persons, by positive evidence, independently of that which was in Mr. Lowell's possession, and inaccessible to me. There were other points, too, on which I noted a great reserve, in the "Reply," respecting material facts, intimately known to Mr. Lowell, but of which I had no positive information. These considerations determined me not to be hasty, in writing, before I had ascertained what facts could be established beyond question. One inquiry suggested another ; and the sort of investigation, to which I was subjected, proved to be a work of more time and labour than I, at first, anticipated.

The protracted illness of a member of my immediate family, and its fatal termination, the subsequent death of my father, and new duties, of a pressing character, which thereby fell upon me, and other circumstances, not interesting to the reader, occasioned long interruptions to my unwelcome task. My inquiries, however, pursued at intervals, led to some unexpected discoveries, suggesting both further inquiry and greater caution in forming conclusions. Postponement, thus far, was not to be regretted; since, had I written earlier, I must have written in ignorance of some important facts, tending to account, in my own mind at least, for a course of conduct, on the part of Mr. Lowell, which had before seemed inexplicable.

A greater cause of delay, than any I have yet mentioned, I have found to be incident to the business of carrying through the press, with needful revision, such a book as this had gradually become. The tardiness of typography has greatly exceeded my expectations. Nearly two years ago, my answer had been, mainly, prepared. It is more than a year, since it was not only completed, but, about three hundred pages had been actually struck off, and a considerable further portion was in type, undergoing correction.

It was in this stage of progress, that I received positive information, that Mr. Lowell was proposing to embark for Europe, early in the following April. I did not doubt that he was well enough aware, that my answer to his pamphlet was in the press; but I did not choose that there should be any room for doubt upon that point in the minds of others, lest I might subject myself to the imputation of purposely seeking the opportunity of his absence, to put forth, unexpectedly, a printed statement concerning him. The only question was, as to the time, form, and manner, of giving him notice, in consequence of my having heard that he was not in good health.

Under these circumstances, the course, I concluded to take,

was, to place so much of the book, as was then printed, in the hands of two of his most intimate friends, with liberty to read it themselves, and then, if they should think proper, to deliver it to Mr. Lowell, for his private perusal, with notice that I intended to proceed in its completion, as fast as circumstances would permit. The residue, in manuscript, I did not think proper to put out of my own hands. It lay in an illegible shape, calculated only for the printer's use, and might undergo material modification and amendment, as the work advanced.

I, accordingly, sent to those gentlemen all the pages, which had then been struck off, and proposed to send them, in a few days, about one hundred pages more, in proof sheets, if Mr. Lowell concluded to see them.

The friends of Mr. Lowell decided to communicate to him my offer of these portions. I was informed that they did so in the latter part of February, 1850; and that he, "unhesitatingly, declined receiving any fragmentary part of the intended publication,"—assigning as his reasons, that "the portion, not submitted, might contain other charges, and perhaps of more importance, than those sent;" that he had "already postponed his visit to Europe a full year, under the *continued threat* of such publication, that he *might be here* to receive and answer it;" and that, "his passage having been taken, and his arrangements all made, or in a state of forwardness, he could wait no longer for that purpose."

He, accordingly, sailed for Europe at the appointed time. A year has since elapsed, and he has not returned. The work of the printer has in the mean time gone on, not so fast as I desired, but as fast, he assures me, as its nature and his preparations would permit; and this volume is now ready to be issued.

If Mr. Lowell, after direct notice, preferred, or thought himself obliged, to leave it behind him, that was a matter, over which I had no control. I presume I did more than any rule of courtesy,

in a personal controversy, requires, when I tendered to him the advantage of seeing, before he went, and before it was seen by others, all that was then in a state fit to be inspected. He will, besides, have opportunity, now, of seeing the whole, abroad, within a fortnight of the time of its appearance here. I presume it will hardly be expected, under these circumstances, that I should await the leisure of his return from an indefinite absence, which he can terminate at pleasure.

In respect to his reasons for refusing to look at a "fragmentary part," or for not being now "here, to receive and answer it," they were for him to judge of; and I have no remark to make upon them, except to say, that I never uttered any *threats* on this subject, but have proceeded, from the first, quietly and steadily, in preparing and printing my answer to a very ingenious and plausible pamphlet, and have stated, uniformly, to my friends, when asked, my intention of doing so.

There have been reports, from time to time, that, from various alleged causes, I had abandoned this idea. My friends may rest assured, that every one of these stories was entirely destitute of foundation. I never had but one opinion, or intention, on the subject.

Some friends, I know, have doubted the propriety, or necessity, of my original movement, in making the printed statement, which occasioned the "Reply." That step was sanctioned, however, by other friends, whose good judgement I esteem, and certainly would not have been taken by me without a conviction, that I could not rest in silence, with safety to my own reputation. Perhaps those, who doubted, formerly, will view the question differently, on reading these pages. However that may be, I think all must agree, that, having judged and acted as I did, *then*, whether wisely or not, and having been met by such a "counterblast," as that of Mr. Lowell, I have no alternative, *now*, but either to answer it satisfactorily, or to admit the unanswerable truth of a very gross and false libel.

Having frequent occasion, in the following pages, to advert to the statements of my former pamphlet, and to Mr. Lowell's comments upon them, I have been careful to do so by reference to book and page, (distinguishing my pamphlet by the letter B. and Mr. Lowell's by the letter L.) so that the reader may verify my steps, if he will. Indeed, I have done more. My *extracts* from the "Reply" are so numerous, that a great part of it will be found transferred to these pages,—which is the more important because of the time which has elapsed. I wish to leave no cause for complaint, that ample justice is not done to Mr. Lowell, so far as justice may consist in exhibiting his own statements, in their own language and colouring.

I have taken care, too, to introduce,—generally at full length,—always in the material parts,—the language of letters and papers, printed in evidence against me, when I remark upon them. And when I rely, myself, on written evidence, I either print the document at large, or refer to the place where it may be found.

This printing of former statements on each side, and of evidence *in extenso*, adds much to the number of my pages; and I should apologize for the great length, to which they have run, if I were writing for the entertainment of the public. But, in a private personal controversy of this nature, which nobody is bound to read, and which is intended only to satisfy those friends of either party who may be willing to take the trouble to inform themselves of the truth, I have thought fairness and completeness more important than brevity.

It will be seen that there is, after all, one branch of this subject, upon which I have found it impossible to crowd the proofs into this volume, large as it is. For reasons stated, I reserve them for a supplement.

Those persons, who may be alarmed by the quantity of matter thus set before them, may, if they please, obtain a summary view of what I consider to be proved, and of what I consider remain-

ing to be proved, by reading the two last chapters. In respect to what I claim to have proved, they may turn to the evidence on any particular point, by the references, there made, to prior chapters, relating to the several subjects discussed. A complete view of the case, however, will hardly be obtained at less pains than by reading the book.

Errors, either of the press, or of my own, I could not hope, perhaps, wholly to escape, in a volume of this bulk, though great care has been taken to avoid them. Those which have been discovered are noted below.

EDWARD BROOKS.

Boston, May, 1851.

ERRATA.

- Page 11, line 33, for "May," read March.
- " 55, " 31, for "Francis," read Frances.
- " 229, " 36, for "oberservation," read observation.
- " 268, " 14, for "account of 1811," read account of 1818.
- " 380, note,† line 3, for "no-," read not.
- " " " 4-5, for "Boston," read Boston.
- " 421, line 20, after "Lyman & Ralston," strike out the comma, and insert a period.
- " 443, " 18, after "year," strike out the comma, and insert a period.
- " 450, " 24, for "adopt-," read adopted.
- " 492, Heading of Ch. 49, strike out "MR. KIRK BOOTT'S LETTER OF 1826, AND THE COMMENTS UPON IT," which belong to Ch. 50.
- " 523, line 1, for "published," read printed.
- " 576, " 13, after "also," insert the mark of a parenthesis.
- " 582, " 15, for "gain," read gains.
- " 588, " 17, add "in which year Mrs. Lyman also removed there."
- " 619, " 20, after "payments," strike out the semicolon.
- " 715, " 38, for "ntended," read "intended."

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A N A N S W E R.

CHAPTER I.

STYLE AND TONE OF THE REPLY. OUTLINE OF FACTS, WHICH LED TO MY FORMER STATEMENT.

Mr. Lowell's "Reply" to my pamphlet, though he is quite right in not naming it an *answer*, is highly creditable to his literary ability. It indicates that he might succeed as a writer of fictitious narrative. At least, he has produced what the reviewers would call a slashing article—in style, quite gladiatorial. Its apparent aim is not sober truth, and quiet justification, but rout, victory and slaughter. Pretty indiscriminate, too; party or witness, counsel or magistrate, who may chance to stand in Mr. Lowell's way, is equally treated as an assailant, and with no great delicacy in the choice of weapons, even when that unfortunate position happens to be occupied by some of the gentler sex.

I should not do its author justice were I to say that the "Reply" answers nothing, or explains nothing; nor even that there is *no* fair discussion in it;—but I do him no injustice in saying that there is next to none, and that candid statement is of rare occurrence. Some new facts, certainly, are brought to light, bearing on the old subjects of inquiry. But the most important of these rest, wholly, on Mr. Lowell's *ipse dixit*. Some new evidence is produced. But it relates, chiefly, to collateral subjects, and either opens new issues, or widens old ones of minor importance.

In matters of statement and reasoning, exaggeration

and assumption are its constant characteristics. Some trifling obscurities in the facts before known, or suspected, are cleared up, it is true. But from the *manner*, in which this is done, one might think it were a clearing away of the whole horizon. A few mistakes of mine, in particulars of very subordinate importance, are displayed, with a flourish of trumpets and beating of drums, that seem to announce the detection of fatal errors, involving the whole merits of the controversy. Some trifling slip of memory, or inaccuracy of expression, is seized upon as a great prize, held up, turned over and over, repeated and magnified, till it might seem, to a careless observer, to cover the whole case. Charges, never made, are refuted with becoming indignation—triumphantly, of course. Some, that I did make, are treated more tenderly. The evidence concerning them is either thrust aside contemptuously, as of no value, or completely smothered up in smoke and mystification. Ingenious sophistry often evades the true point in dispute, and makes much show of an answer, when there really is none. A vast deal of mis-statement and monstrous assumption are the groundwork, sometimes, of an argument, and sometimes of an accusation, pronounced or insinuated. There is a world of positive assertion, commonly without a particle of proof, and sometimes respecting facts, which Mr. Lowell, by his own showing, could not possibly know, and has no evidence of, and yet proclaims like an oracle. At last, the old trick is resorted to of seeming to relinquish the line of defence, for the purpose of “carrying the war into Africa,” so as to produce an impression that the enemy has been driven from all his positions, and that nothing remains but to cut off his escape, and show him in triumph to the people. Grave charges against me, personally, and against others, are made prominent, with some show of evidence, such as will hardly bear sifting, but may serve to mislead cursory readers. The whole affair is conducted, too, with a tone of confidence and authority, which makes it an admirable imposition for popular effect. To heighten this, the monotony of accounts and arithmetical computations and dry statements of

fact is pleasantly relieved by the interspersion of occasional moral reflections, scraps of poetry, and veins of irony and sarcasm, extremely well designed to captivate the hearts and understandings of a class of readers, who have no relish for sober statement and sound argument. Altogether it is a bold curiosity. If I were disposed to follow its style, (which I shall most carefully avoid,) perhaps I might advantageously borrow a phrase, and say its "audacity" "defies all competition." [L. p. 63.]

Moreover, this same pamphlet, under cover of vindicating a deceased friend, as well as Mr. Lowell himself, masks, in truth, a venomous attack on the conduct and motives of myself and others, and it has been most extensively circulated.

My statement, made in self-defence against a prior covert attack from Mr. Lowell, though printed, for convenience, was sent to but few persons—at first, a very few, whom I considered particularly entitled to be informed of its contents, and afterwards to such other friends as took interest enough in the matter to solicit a copy. There I stopped. I had no idea of making my private grievance a world's wonder, or of entertaining the great public with a painful domestic history, forced from me by Mr. Lowell.

His "Reply," on the other hand, converting his former secret attack into an open one, and yet pretending to treat me as the assailant, who had thrown *him* on the defensive, has been most bountifully distributed. Not content with dropping it at every door of our common acquaintance in this city, he has dispersed *two thousand* copies, I am told, far and wide, through town and country, many of them among strangers, and even at distant places in other states. Were these measures of *defence*? let me ask.

By way of commentary I may add, that some of the many persons in New-York, who were indulged with copies, are said to have inquired, Who is this Mr. Brooks, who is so favourably introduced to our acquaintance? Others, as I have heard, have even ventured to ask, who this Mr. Lowell is. It follows, of course, that the greater part of the readers of

the "Reply" have never even had an opportunity of seeing the pamphlet, which it pretends to answer; but have enjoyed the high privilege of feasting on Mr. Lowell's libel, quite unadulterated by any of the "poison," to which its innocent statements might be "turned, by passing through the alembic of Mr. Brooks's mind." [L. p. 34.]

Even of those, who read my pamphlet formerly, I can not flatter myself that many, perhaps all, have not long since forgotten, or but indistinctly remember, its statements and proofs. Few readers, I am sensible, look beyond the indulgence of a first curiosity in the scandal of a private controversy. Few stop to compare and scrutinize evidence. Hence, considering Mr. Lowell's social position, in connexion with the tone and character of his publication, thus widely disseminated, I was neither surprised nor dismayed, when I heard it announced, in certain quarters, that I had been not only answered and refuted, but absolutely annihilated,—or, as one gentleman expressed it, *pulverised* and *blown away*. My surprise has rather been to find so many quiet readers, of *both* sides, who were not, themselves, carried away by such a whirlwind, but observed, as well as they could discern through the clouds of dust in the air, that whatever slight damage might have been sustained by some of the upper works, the foundations, at least, of my structure stood unshaken.

There is enough of new matter, however, and enough of impression has been produced, to call forth a serious answer upon a very serious subject. Many may think, that, to place us on equal ground, my present remarks and those of my former pamphlet ought, now, to be circulated as widely as Mr. Lowell's. And so they should be, had they been written for an electioneering campaign—or if my object were to do the utmost possible harm to Mr. Lowell—or if I wished to produce, in my own favour, a merely *popular* effect on this controversy. As it is, I shall follow no such example. The subjects, I am obliged to speak of, are such, that I have no desire to publish them to an unnecessary extent. My object is, and has been from the beginning, to correct erroneous impressions, occasioned by Mr. Lowell, concerning myself,

where I think it important to have them corrected. I shall not depart, therefore, materially, from the course I formerly pursued, until I see greater occasion for it than I now do.

It is unfortunate for Mr. Lowell, and a matter of regret to me, that I cannot make this correction, effectually, without presenting him in a very disadvantageous point of view. But it will be found that the fault is all his own—that, during the four or five years last past, he has steadily pursued a course, the tendency of which (though that I do not presume to have been his direct object,) has been to sacrifice my reputation to certain ends of his own ;—and that, by his late publication, at any rate, he has left himself no ground for complaint of retributive consequences.

It is unfortunate, too, that I am obliged to speak of relatives and connexions, both living and dead, under circumstances very undesirable for a public discussion, or even a private communication among friends. What, then, it is sometimes asked, is the necessity? Why all this exposure of intimately private affairs? Why this raking up of old family dissensions? Why this disturbance of the ashes of the dead? What can be more discreditable?

Mr. Lowell has not failed to avail himself of this natural sentiment in exciting all the prejudice against me, which such suggestions tend to create. With what candour and justice we shall presently see.

Throughout his publication, he seeks to impress his reader, at every turn, with the belief that my complaints of *him* are a mere pretext to lay open to the public an old family quarrel, which he had no concern with, and to cover a malignant assault on the memory of my brother-in-law, the late John Wright Boott. The book opens with solemn reflections on the odious character of a meditated attack on the dead, and assures the reader, at the threshold, that my correspondence with Mr. Lowell, in 1846, was entered upon for no other end. [L. p. 1.] It closes with the declaration, that I had evaded a full and fair inquiry into the merits of these former controversies, when tendered to me before the legal tribunals,—having shrunk, as is suggested, from that searching species of investigation, under a consciousness of weak-

ness, but intending, all the while, to appeal to the public in print, with a one-sided statement, instead of submitting to a fair trial in a court of law. [L. 206, &c.] Numerous passages, from beginning to end, might be selected, which aver that the real issues are, exclusively, between that deceased gentleman and myself ; that I was blinded to his merits, in his life time, by excited feelings of animosity, arising out of a personal quarrel ; that I still pursue that quarrel beyond the grave ; that I have been, ever since his unfortunate death, only seeking excuses to blacken his memory ; and that I finally picked a quarrel with an innocent and friendly third party, namely, Mr. John A. Lowell, only to make him serve as a sort of conduit, through which I might discharge my spite over the tomb of a buried enemy.

Now if all this be shown, as it will be, to be utterly unfounded, its injustice and unfairness can only recoil upon the head of its author. Even as the matter now stands, on Mr. Lowell's showing, his contrivance is, perhaps, too easily seen through to answer its purpose ; for this imputing of bad motives to me seems to have had no other object than to withdraw attention from Mr. Lowell's own disingenuous part in an affair very unfortunate for all concerned, and to heap upon me the odium, which justly belongs to himself.

How came I to enter into a correspondence with Mr. John A. Lowell, in 1846 ?—and what was its tenor ? When, and how, and for what purpose, came I to make a printed statement ? If domestic matters, and matters affecting the memory of a deceased person, have become involved in a discussion between Mr. Lowell and myself, whose is the fault ?

I shall endeavour to answer these inquiries plainly,—temperately,—clearly,—without any of those startling and pungent graces of the “Reply,” which seem to resemble what the actors call clap-traps. To do so, I must, first, briefly recapitulate some of the leading undisputed facts.

There had been, it is too true, much unhappy dissension in the family, of which I was, by marriage, a member. Should I say that this was wholly *caused* by peculiarities and eccentricities in the character and conduct of the late

Mr. J. Wright Boott, I should forestall a question at issue. This, for the present, I forbear. But I may safely say, that these dissensions *related*, entirely, to the conduct of that gentleman and to matters growing out of it.

It was believed, by some of us, during the latter part of his life, that he had become, and in fact had long been, partially insane. This was doubted, or disbelieved, by others. It was known to me, and believed by those, who acted with me, that, whether insane or not, he had very much mismanaged the family property, which was all in his hands, and that he was, in the then condition of the family, a most unsuitable trustee for some of his brothers and sisters, with whom he was at variance. Others were incredulous of all this, and, knowing nothing of the facts, supposed Mr. Boott to have been an excellent manager of the property, and attributed every suggestion of the contrary to some improper motive. He had never settled the accounts of his father's estate, though twenty-seven years had elapsed since he took upon himself the trusts of the executorship, and there was no security, for any considerable sum, in the bond he had given.

Under these circumstances, the question arose, whether a new fund, expected from the sale of the family mansion, should be permitted to go into his hands. My previous knowledge, and other circumstances, seemed to require of me to judge for others as well as for myself. Several of the family were absent—several, who were here, I knew to be mistaken as to facts—and I was, besides, a trustee for some minors, who were interested. Mr. William Boott was the only brother, then living, in this country. He was fully persuaded of Mr. J. Wright Boott's insanity, and thought him unfit to be the family trustee. Both Mr. William Boott, therefore, and myself declined executing a certain deed, which would have had the effect of placing the proceeds of the sale abovementioned in Mr. J. Wright Boott's hands to manage at his discretion, with security merely nominal, and with knowledge, on our part, of a very indiscreet investment, which he proposed. We declined sign-

ing, until it was agreed that a new trustee should be appointed.

Mr. Lowell, though not a member of this family, professed himself to be a common friend, and more particularly the friend of Mr. J. Wright Boott. In that capacity, and as his representative, he became an active negotiator for him on this subject. He prepared a paper, called an account of the executorship, and claiming a balance of \$25,000 to be due to the executor. This I did not admit, nor believe in, and the paper was very unsatisfactory, as an account, both in substance and form. The negotiation, however, ended in a compromise, whereby the account was allowed, without proof or question, on the condition of Mr. Boott's resigning his trust, and permitting a new trustee to be appointed; and the required deed of the house was then executed.

Several months after this settlement, Mr. Boott died by *suicide*. An inquest was holden, which Mr. Lowell conducted in behalf of the family, and at which he made himself a witness. I was not present at it; neither was Mr. William Boott. We knew nothing of the testimony, except as it afterwards appeared in an official report. No evidence had been offered by Mr. Lowell, tending to prove insanity. He expressed his own opinion that the deceased was *not* insane. The verdict, therefore, was simply "suicide." The official report of the evidence, accompanying the coroner's return, contained nothing justly exceptionable in Mr. Lowell's testimony, if he believed that he had "never discovered any thing indicating insanity in the deceased;" [B. App. p. 59.] though that testimony, in so positive a shape, and without qualification, or allusion to the opposite opinion of others and to facts he had mentioned to me, that very day, tending to confirm this opposite opinion, was quite contrary to my expectation, and, under the circumstances detailed in my former pamphlet, a great surprise.

But the deceased left a will, enclosed, as was said, in a letter to Mr. Lowell. That letter, according to Mr. Lowell, gave a history of the family dissensions, and contained charges against me of *dishonesty*, in my conduct towards the writer, and, among other things, of having

placed and kept one of his own sisters in the house with him *to act as my spy*. Knowing these charges to be without the slightest colour of foundation, I considered them further evidence of insane delusion. Mr. Lowell, however, insisted that the letter was a perfectly sane production. A sight of it was therefore solicited by me, but refused. It was urged and claimed as my right, under such circumstances ; but was still refused.

This was the origin of my difference with Mr. Lowell. I had been much displeased, certainly, with other points of his conduct, which had then become known to me ; but, when he refused to show me a letter concerning, particularly, my own character and deportment in family relations, which Mr. Lowell had no right to meddle with,—while he was giving weight to its insulting statements, by declaring that its author was perfectly sane, and that the letter itself was proof of his sanity,—this conduct, as affairs stood, seemed to me not the part of a friend or a gentleman. Circumstances made it a grievous injury ;—for the dissensions in the family, while the matter of executing the deed was in agitation, had become a subject of curiosity and conversation among our common acquaintance, although the true causes of them were little known. Statements, unjustly affecting my reputation, had been made. The public excitement, usually caused by a case of suicide, gave them new vitality. It became known that a *letter* was left by the deceased, said to explain the *causes* of his self-destruction ; and it began to be whispered about that some shameful misconduct of other members of the family, and of myself in particular, had led to this melancholy event. Mr. Lowell's statements to third persons, respecting the contents of the letter, however cautiously made, I was satisfied were tending to strengthen these rumours ; and I had reason to suspect that portions of the letter itself had been shown or repeated.

As the only means left of obtaining a sight of the letter, after personal applications and the intervention of a friend had proved ineffectual, and with the view also of proving the writer's insanity, I availed myself of my wife's right, as an heir at

law, to oppose the probate of Mr. J. Wright Boott's will, hoping to compel an exhibition of the letter at the hearing. This attempt failed on a point of law, which was decided against me. In the mean time, Mrs. William Lyman, another sister and heir of the deceased, became, under the advice of some of her best friends, and of able counsel, an opponent of the will on her own account. Mr. William Boott, Mrs. Brooks and myself, thereupon, conveyed to her all our pecuniary rights and interests in the property. With these interests, added to her own, Mrs. Lyman, by the advice of her counsel, carried the cause, by appeal, to the Supreme Court. I expected to be a witness in the cause, and to have an opportunity, in that capacity, of explaining some matters, which concerned my own vindication, including what might be charged in the letter, which it was probable would, in some way, be brought out at the trial, as bearing on the question of the testator's sanity. I had great confidence, that, upon a fair and full investigation, a jury would be convinced, that the writer of that letter was not of sound mind. Whether they should be or not, I had no doubt it would appear, that his death was not justly attributable to any misconduct of myself, or of any other member of the family.

About a year after the appeal, however, and before it came to a hearing, Mrs. Lyman altered her determination, and withdrew her opposition to the will. The law left me, then, no opportunity of trying the question. My own right of property, as an heir, had been parted with to Mrs. Lyman; and it was, besides, too late for any other heir to make an appeal. This misfortune, however, was not without its consolatory circumstances; for I felt a natural reluctance to disclose, even as a witness and for my own defence, painful incidents of domestic life, which a trial would have brought to light.

As matter of personal reputation, I had thought it incumbent upon me to take all proper means to obtain sight of a letter, said to contain serious charges against me,—by a gentleman, whom Mr. Lowell and his friends, and all, who relied on his authority, believed to be perfectly sane when he made them,—in order that I might answer or explain

them to other parties, concerned in these family matters, and to my own friends, if I should find it necessary so to do. I had thought it also incumbent upon me, to put the fact of Mr. Boott's sanity in the way for legal investigation, since, if he should be found to have been insane, that, of itself, would sufficiently answer his charges. I believed this had been effectually done by Mrs. Lyman's appeal. It was hardly to have been anticipated, that Mrs. Lyman would abandon a cause, which she had once, under legal advice, deliberately made up her mind to prosecute.

My endeavours to rectify my position, it was true, had thus entirely failed ; but not from the want of any step proper for me to have taken, under the circumstances. I was sensible, that a prevalent opinion had grown up to my disadvantage, and that the abrupt abandonment, for reasons not known to the public, of the suit, which, it was understood, was to try the question of the sanity of the deceased, tended to increase it. But no individual was, apparently, responsible for the origin of this prevailing opinion. I was extremely suspicious that it was, indirectly, owing to Mr. Lowell ; but I had no definite ground to justify my acting on that hypothesis. I had made up my mind, therefore, to submit to my misfortune, for the simple reason that I saw nothing proper for me to do towards self-vindication. The idea of drawing up a formal statement, to disclose, either in print or in manuscript, upon my own authority, the disagreeable facts, which would have appeared upon a trial, was quite revolting to me. It was a last resort, which did not appear to me sufficiently called for by the breath of an intangible rumour.

Such, precisely, was the state of the case, when in November, 1846, I became, for the first time, informed, of testimony from Mr. Lowell, at the coroner's inquest in May, 1845, which did not appear in the coroner's official return, and which, if correctly reported to me, called for explanation. This discovery entirely altered my views as to the necessity of action. It made certain to my mind that, which I had before suspected. The testimony, not officially reported, but known to a number of persons at the time,

though not to me, was sufficient to account for the common belief. It furnished me with a responsible author, in whole or in part, of calumnies widely spread. I saw that I was suffering in reputation through the agency of Mr. Lowell, who had acted, as I was bound to presume, under some mistake. I considered it my duty, therefore, as a gentleman, to call upon him for an explanation ; and, as preliminary to that, to give him the opportunity, as a gentleman, of stating, in his own language, what his testimony was. This led to the correspondence, which I formerly printed. [B. pp. 12-24]

Mr. Lowell evaded the most material of my inquiries, and finally refused to answer them. This compelled me to another step; namely, to prove, by those, who had heard it, what his testimony was. I did so, and found my information concerning it substantially correct. I saw that Mr. Lowell was chiefly relied upon, in public opinion, to warrant what was commonly believed to my prejudice. It was plain, from the correspondence, that he was not prepared, and did not intend, to take back, amend, qualify or explain any thing he had said, in a way to remove the imputation; and that he would not permit, if he could prevent it, any mistake to be corrected.

It was then, for the first time, that I felt the necessity, and formed the determination, of printing that correspondence, and the written declarations of the jurymen respecting Mr. Lowell's testimony, with some portions of the evidence, within my knowledge, needful to contradict it, for the purpose, not of general publication, but of submitting the statement to what Mr. Lowell is pleased to call "a select portion of the public;" [L. p. 2.] that is to say, a few of my own friends, who I believed had got wrong impressions, and some other persons, who had a particular right, or interest, to know the truth.

This is a plain summary of the facts regarding my own course of action. I shall presently refer, for confirmation of it, to the statements of gentlemen, whose relation to me, as my counsel, placed them in the best position to know the time, manner, and occasion of my acting as I did.

CHAPTER II.

JUSTIFICATION OF MY FORMER PRINTED STATEMENT.

If my object had been that, which Mr. Lowell suggests,—to calumniate and vilify either the dead or the living,—I ought, like Mr. Lowell, to have published what he calls a “posthumous attack,” [L. p. 141.] to the four winds. But I meant to do neither more nor less than I thought the necessity of the case, common regard for my own reputation, and respect for the opinion of judicious friends, had made imperative ; and that was, to cause the very limited circulation, above mentioned, of a printed statement. If I erred in this judgement, Mr. Lowell, at least, has no right to complain of it, considering the character and the extent of his recent publication.

Neither can Mr. Lowell, justly, complain of attacks on the dead, which he himself has provoked and compelled, even if the statements of my former pamphlet deserved, (as I think it clear they do not,) to be so regarded. Still less is it for *him* to complain, that I disclose private family matters, to which he, (who is not a member, nor even a remote connexion of that family,) says he was “*no party*.” [Letter from Mr. Lowell, B. p. 17.] But, for reasons that will appear in the sequel, it suits Mr. Lowell’s purpose to hold himself out as the generous champion of the Boott family, without, as he pretends, an atom of personal interest in the matter, and to play the part of an indignant vindicator of the honor of a friend in his grave, whom he represents to have been made the subject of a cowardly attack. How all this assumption and pretension will appear, when the whole course of Mr. Lowell’s conduct in this matter, so far as I may be able to trace it, comes to be disclosed, the reader will judge.

If Mr. Lowell can not, can the public, can any of my friends, can any of the Boott family, reasonably complain

of the course I have taken? I am well aware how highly objectionable it is to expose to the gaze of strangers, without necessity, the privacy of domestic life, or to discuss, in print, questions of personal infirmity and individual character, or conduct, whether of the dead or of the living. I am entirely sensible how rarely complete justice can be done, in any controverted matter, upon mere *ex parte* statements and proofs. I was struck with some sensible remarks on this subject, in a respectable journal of this city, not long since, caused by a very gross case of mistaken interference on the part of the press, and even of a portion of the city government, (at the invitation, apparently, of nobody concerned,) in matters of a strictly private character, affecting several respectable persons, whose actions and motives were thus brought into public discussion: The concluding sentences were as follows: "There are, doubtless, cases of violation of rights, which cannot be redressed without appeal to the public tribunals, or to the public sentiment. But, in general, the more completely such griefs are suffered to repose in the shade of entire privacy, the better it is for all concerned. A wanton invasion of that privacy should be regarded as one of the greatest offences against good manners, and should be punished by the pointed censures of the public opinion." I entirely subscribe to these sentiments, and must submit to the censure, if I fail to satisfy every impartial reader, that this is, precisely, one of those cases, which constitute an exception to the general rule.

Will any man tell me what he is to do, who has the misfortune to discover that his good name and estimation in the community, in which he lives, have been secretly undermined, in some serious matter, by a person of high standing in that community, who, being applied to, refuses all reparation? Shall he take the law into his own hands, and administer summary justice upon the offender, after the fashion of barbarians? Or shall he *break* the law, according to the usage sanctioned among gentlemen in many civilized communities, by calling out the offender, to shoot him, or be shot by him, with all the ceremonies prescribed by the code of honour?

In either event, how stands the question as to the *truth of the calumnies*, that had been uttered? Is *that* settled by the direction of the bullet, or by any act of personal violence, employed or attempted? Is the *wounded reputation* set right, in the estimation of those, among whom he lives?

Presuming that these modes of supposed redress, however available, and however sanctioned in some parts of the world, do not receive the countenance and approval of this community, I repeat, What is the injured party *here* to do? He may have two other modes of proceeding open to him—appeal to the law, and appeal to public sentiment. He can have no other. Without discussing the value of suits for damages, and the estimate of a man's reputation in dollars and cents, by twelve men drawn out of a ballot box, or the advantage of trying his antagonist by indictment, on his own oath, when an offence has been committed against the Commonwealth, it is enough to say that, in my own case, I was advised that Mr. Lowell had not spoken any *actionable* slander, nor been guilty of any *indictable* matter. He had not charged me with *murder*, or any other *crime*, or *legal* misdemeanour, that I know of. He had, at that time, only verbally stated, as facts, certain matters, that were not absolutely true, or, if literally true, had so stated them as to convey, by the omission of other facts, false impressions, and had thereby caused it to be believed, by many persons, that I, *by a course of unjustifiable conduct*, had *caused* a brother-in-law to *take his own life*. Whether he believed his statements to be true or not, and whether he purposely, or carelessly, omitted the other statements, which should have been made, or whether he did not believe in the truth of those matters, which I think should have been stated, are questions wholly immaterial to my present point; since the result of our correspondence, in December, 1846, was, that he refused to reconsider, or even to restate, for my information, his former testimony to the jury, or to permit me to inquire into its correctness, or to aid me, in any way, in rectifying a mistake, if one had been committed.

Here then was a case of grievous injury, for which the

law, as I was advised, afforded no remedy. Once more let me ask, What is a man, so situated, to do, to reinstate himself in public opinion? Can he do any thing *but* appeal to that public opinion, by stating and proving the truth of his case? And, if that case involves a long and complicated state of facts, can he make that appeal otherwise than in *print*? Can he do *less*, to answer any good purpose, than to circulate such a statement among that *limited portion* of the public, with which he particularly associates?

It must be plain, to every intelligent reader, that there is and can be no other effectual mode of redress, for cases beyond the reach of the ordinary tribunals; and that, in every case of this nature, the propriety of the proceeding must depend upon the merits and the circumstances of the particular case. What then was the case?

Was it true, or was it not, that Mr. J. Wright Boott had shown himself an unsuitable trustee of the family property? This, unfortunately, was a principal question, not to be avoided in considering my justification. The idea of his mismanagement lay at the bottom of it. Mr. Lowell's testimony and statements to the jury, and his statements to other persons at various times, had, in effect, declared to them, without my knowledge at the time, or in any tangible shape for more than eighteen months, what he now boldly declares in print, namely, that there had been no mismanagement on the part of Mr. Boott;—that, instead of his being a debtor to his father's estate, the estate was a debtor to him;—that I was informed of this by a true and complete account, prepared by Mr. Lowell;—that, notwithstanding such knowledge, I insisted on Mr. Boott's resignation of the trust;—that my course of action in that matter, was, therefore, wholly unjustifiable, and could be attributed only to the animosity and ill feeling against Mr. Boott, which Mr. Lowell falsely charges me with having cherished and still cherishing. This had been represented, not as a pardonable misapprehension of the true state of the case, but as a wanton and malignant attack on a gentleman of high honour and nice feelings, in the full possession of his reason, yet

driven to take refuge in suicide, from these groundless accusations by me and by other relatives, who were thus morally responsible for his death. Mr. Lowell, if he had not made that direct statement, had, at least, lent the full weight of his opinion and of his testimony, in the fundamental facts above stated, to propagate and uphold the belief, that conduct of mine, utterly inexcusable, had led to the suicide. I am aware that Mr. Lowell does not admit all this, but I shall prove, if I have not already proved, every word of it.

Indeed, the evidence of it was distinctly before me in the solemn written declarations of the jurors. I had been, moreover, just assured by Mr. Lowell, in our correspondence, that there could be no mistake for him to correct, since he knew and meant precisely what he had said ; having, as he insisted, very cautiously weighed his words, in consequence of the delicacy of his position, and of the feeling, which he knew to exist in the family. [Letter from Mr. Lowell, B. p. 23.] What then was I to do ? What would Mr. Lowell himself have done, under like circumstances ? Would he have permitted,—should I permit,—so gross and unfounded a calumny as I assert this to be, yet resting on such authority, to go uncontradicted ? Should I shrink from an investigation of the facts, or should I court it in the only way left open for me ? What step could I take, adequate to the occasion and the end, except, since there was no remedy at law, to state and prove the truth of the case, not to the general public, but to my friends, for their private information, in the only remaining form, in which a statement could have due effect ?

Was I to be silent, because a death had happened, when the very question was, whether I had not *caused* that death by false, unfounded and malignant charges ? If the deceased had, also, charged me, as Mr. Lowell said he had, with dishonest conduct towards him, and the living repeated and endorsed the charge, should the living not be held to answer it, nor the facts necessary to my own vindication be shown, because they relate incidentally to the conduct of the dead ? Can it be, in cases of dispute and dissension among a number of persons concerning the conduct of one of them, who

happens to die, in the midst of the controversy, that the survivors of his party become, thereby, privileged to make what misrepresentations, and to publish what calumnies they please, and that the survivors of the opposite party, however calumniated, are bound to submit in silence, on penalty of being held up to public execration, as wanton invaders and violators of the tomb? Such may be Mr. Lowell's peaceful philosophy, when he finds it for his interest to adopt it. It is not mine; nor do I believe it will be that of intelligent and fair-minded readers, upon a just understanding of this case. I trust I have treated, and ever shall treat, the memory of the departed, with all the respect and tenderness, consistent with the necessity imposed upon me of explaining my own conduct; but I hold that to be a mistaken delicacy indeed, which would sacrifice the reputation of the living to that of the dead, by any falsehood, dissimulation, or straining of the truth; and I shall presently leave it to the reader to judge, whether Mr. Lowell's otherwise commendable zeal in the cause of a deceased friend, which happens, to be closely identified with his own, has not, sometimes, hurried him into that unfortunate kind of mistake.

But is it not monstrous, that I should be arraigned, *by Mr. Lowell*, on this charge? Who, I desire to ask, brings *the dead* into this field of controversy? Is it I? Mr. Lowell says to me, in effect, "*You killed* this unfortunate man by *false accusations*;"—and *so he says to others*, whenever the question of his death arises. I answer, "I made no false accusations. I said no more than the occasion required; said it not to *him*, but to the conveyancer, who called upon me for an act, which I was obliged to refuse, and to assign my reasons for refusing. I said nothing, even to that gentleman, in a harsh or offensive form; and *all I said, was, as you, Mr. Lowell, know, strictly true; and so I will prove.*" "Oh! no," says Mr. Lowell, "*you must not dare to attempt to defend yourself in that way—it would be a sacrilegious attack upon the memory of the dead!* I only say, you drove your late brother-in-law, by false accusations, to take his own life; and *that you must submit to.* I have a letter, besides, in which

he says what amounts to the same thing himself—a letter, written almost in the very act of self-destruction, and written, ‘with great calmness, *as befitted the occasion.*’” [Letter from Mr. Lowell, B. App. p. 60.] “But,” I answer, “he was insane when he said so; the very charges you speak of, against me, were the offspring of his insanity. Will you have the goodness to let me see the letter? I think I can satisfy you, by internal evidence, of the writer’s insanity.” “By no means;” says Mr. Lowell, “it is a ‘sacred trust,’ [B. App. p. 68.] and I shall show or read it only to such persons as I please—certainly not to you, whom my friend charges with a degree of dishonest conduct towards him, which occasioned his death.” “Then,” I reply, “you compel me to prove, by other means, the fact of his insanity.” “Oh! no;” says Mr. Lowell again, “you must not attempt to prove *that—it is attacking a man in his grave!* And *I* assure you, *as I do every body*, that he had not a tinge of insanity about him, and that his letter ‘evinces no aberration of mind,’ [Letter from Mr. Lowell, B. App. p. 60.] but *quite the reverse*; it ‘strongly tends to prove that the said John W. Boott was *sane* when the same was written.’!” [Lowell’s affidavit, B. App. p. 68.]

Now, I submit to the reader, whether this idea, so much insisted on by Mr. Lowell as good cause of public indignation against me, namely, that nothing touching the merits of the question is to be inquired into, because it relates to a person, who is no longer in the midst of us, would not be, under such circumstances, positively ridiculous, were it not that the subject is one of most grave and melancholy import.

As to the scandal of publishing family dissensions, which is also laid at my door, they were, in this case, unfortunately, too well known long before the death of Mr. J. Wright Boott. Mr. Lowell declares this, when he desires to excuse himself by their notoriety. [L. p. 16.] They were known to all those persons, at least, among whom I sent my pamphlet. The scandal of *publishing* them, to the *world at large*, rather belongs to Mr. Lowell, than to me.

The knowledge of such a fact, among those who knew it, was, of course, calculated to produce unfavourable impressions against the whole family, without much discrimination. The shocking death, which followed, had it been found to be the effect of insanity, would naturally have corrected this; for the character, conduct, and sanity of the deceased were known to have been the very subjects of dispute. His subsequently ascertained derangement would, well enough, have accounted for all pre-existing difficulties. Mr. Lowell's interference,—I do not speak of motives, but, I say his interference in fact,—and the promulgation of his opinions, prevented this desirable result, and led to surmises and suspicions, in the public mind, of a most distressing character, infinitely more injurious, to certain members of the family, than any thing before known or suspected.

Now, although this mischief had been done, it was not wholly irreparable. If it can, even at this late day, be satisfactorily shown, that those former dissensions were not the case of an ordinary family quarrel, equally discreditable, commonly, to all, who are engaged in it, but that all the troubles, which had existed in this family, *for years*, arose out of the extravagant and unreasonable conduct of *one individual*, whose peculiar position, as holder of the common property, and male head of the household, was such, that his eccentricities could not but affect the whole circle, while his strange suspicions and unfounded charges, against one and another, and almost all in turn, were constantly producing extreme exasperation and distress, so long as he was considered a fully accountable being,—and if it can also be shown, that this extravagant demeanour was found, in the end, to be fairly attributable to *mental derangement*, I beg to ask, whether, in showing these facts, in my own defence, I am guilty, as Mr. Lowell pretends, of a scandalous offence against the decencies of life. In defending myself, do I not, also, *relieve the whole family* from the chief discredit of an otherwise disgraceful quarrel? Do I not even *vindicate the memory of the deceased from every imputation of moral*

delinquency? Does this course of justification, then, deserve the reprobation, with which Mr. Lowell affects to visit it so indignantly?

What, let us inquire, would have been the probable consequence, had Mr. Lowell taken a different course at the inquest, and a verdict of "suicide *caused by insanity*" had been found? From the singular nature and partial character of the insanity, with which this unfortunate gentleman was, in my belief, afflicted, it is not surprising that diversity of opinion about it should have existed, in his lifetime, among different members of his family. Such cases in families are by no means of the rarest occurrence; and they are apt enough, when they do unfortunately occur, to excite irritation and to occasion dissension, till the fact is settled;—though I believe a case resembling this, in *all* its features, never before existed. The event, which had happened,—a death by suicide,—was one, which, by itself, when no insanity had been previously suspected, is apt, by most minds, to be attributed to that cause. Had the facts been inquired into, and an impartial jury had so found, would not all the family have been likely to acquiesce in that result, and to adopt, at last, the opinion, which had long been entertained by some of them? To me it seems scarcely doubtful; and the effect would have been, I believe, to heal the dissension by the removal of its cause. Mr. Lowell's interference, alone, precluded and prevented, as I shall show, any such probable consummation.

Which, let me ask, then, is the *real aggressor*, in respect to these *family* interests?—a stranger, who thrusts himself into them, and not only prevents that probable and highly desirable result, but chooses to attach himself to one of the parties, and to make himself the champion of that party at the expense of the other, to whose misconduct, instead of the insanity of the deceased, he attributes the death,—or one of the persons so attacked, who, in defending himself, removes just cause of censure from the whole family? And which is most justly chargeable with *harming the reputation*

of the dead,—he, who declares that certain “grave errors,” which he is *obliged to admit*, [L. p. 165.] were the *willful* acts of a *sane* man, or I, who ascribe them to a degree of mental obliquity and perverseness, on certain subjects, amounting to a peculiar species of insanity?

Mr. Lowell, indeed, throughout his book, accuses me of charging Mr. J. Wright Boott with intentional falsehood and fraud. Can any thing be more unjust or untrue? I not only made no such charge, but I took the utmost pains to prevent even an *inference*, from facts, which the question of his suitableness for a trustee compelled me to state, prejudicial to his character as a man of *honor* and *upright intention*. Let me cite one or two extracts from my former pamphlet in proof of this:—

“I have expressed, above, my conviction of Mr. Wright Boott’s partial insanity, in the last years of his life. I have alluded, also, to his incompetency as a safe depositary of trust property—which subject will carry me back to a date long before the idea of his insanity, on any subject, had distinctly occurred to me. I have since been led to doubt, whether there was not a tinge of it even at that early period. But whether there was, or not, I shall be obliged to state facts, showing such a singular disregard of the duties of a trustee, as commonly understood and practised, that I desire, in the outset, to make known the opinion, which I uniformly entertained and expressed of him in one particular, lest my remarks should otherwise be misconstrued into an unmanly attack on the *honor* of the dead. My business lies with a gentleman, who is alive, and well able to defend himself, if I do him wrong. That I shall carefully endeavour not to do. I do not desire, nor intend, to attack even that gentleman—unless it be considered an attack to exhibit facts and proofs, adduced in self-vindication, which may be found at variance with his statements, or, at least, lead to inferences different from his own. But in respect of the late Mr. Wright Boott, whom I am reluctantly compelled to speak of as perfectly incompetent for the office of a trustee, I entertained for him, during an acquaintance of more than twenty years, a very high regard, and never felt a feeling of unkindness towards him, except during a short period of great rudeness on his part, before I had become impressed with the belief of his insanity. I take pleasure, therefore, in recording the fact, notwithstanding what I shall be obliged to say concerning his management of trust property, that, from the first to the last of our intercourse, I considered him a man of unblemished integrity, and a high, I may say even chivalrous, sense of honour. But he had great peculiarities—among them, that of seeming to consider the whole family property his own, to deal with as he pleased—investing it accordingly, not as a trustee, but in his own private name—using it in unwarrant-

able speculations—which greatly impaired it, and at one time threatened its total loss—rendering no account of it to any body, and in fact keeping none—consulting no other heir respecting it—and, in general, without any business habits whatever, holding himself above all the ordinary responsibilities of a legal trust, on the due execution of which others were dependent. But all this, which it required a long and intimate acquaintance with him to understand the causes of, I attribute to peculiarities of character, which amounted at last, if not at first, in my judgement, to mental hallucination.” [B. p. 8.]

And again, after having stated some of the facts, which went to show his mismanagement of the property, and his incompetency as a trustee, apart from the question of insanity, I said :—

“ And yet I desire to repeat, that this incompetency did not arise from want of integrity, or of high-toned feeling, nor from want of intelligent perceptions ; but from want of judgement, and want of accurate business habits, and total negligence of accounts, coupled with certain peculiar ideas, which always confounded generosity and justice, and certain extraordinary notions concerning his own rights and powers over the property of his father’s estate. Far from being entirely selfish in his principles of action, it was, probably, a desire to maintain the old firm, for the benefit of the family, as he conceived, which induced him to embark the estate in trade,” &c.

[Here follow like excuses, for other particular facts, which had been stated as evidence of mismanagement.]

“ And so other good and generous motives, operating in connexion with his own peculiar views of affairs, caused him, in many other ways, to waste the family property, dealing with it always as if it were his own, to do with as he pleased, and appropriating it even to the security, or payment, of his own personal debts, without even consulting the other heirs upon the subject.” [B. p. 50.]

Passages of this tenor might be multiplied, and not a line, or a word, I am confident, can be found of a contrary tendency. Whenever truth and self-defence compelled me to state a fact, from which readers, unacquainted with the peculiar character of the deceased, might possibly infer, if it stood unexplained, that he was not only negligent, but criminal, not only eccentric, but vicious, I took pains to point out a cause and a motive, consistent with the integrity of purpose, which I every where ascribed to him ; and every error of his life, referred to by me, was set down to that idiosyncrasy, which marked him from the beginning, and which terminated at last, if it did not originate, in such posi-

tive derangement, on certain subjects, as made him, in my judgement, no longer an accountable being.

What shall we say, then, to the candour and justice of Mr. Lowell, in such passages as this?

"That a generous and high minded purpose of this sort should be turned into a weapon against Mr. Boott, to bear out the imputation that he had *knowingly defrauded* the heirs, and *sustained the fraud by his own oath*, is one of the most cruel perversions of truth in the whole pamphlet." [L. p. 34.]

"But even if Mr. Boott credited all he had ever received, and charged no more than he had paid, there was one way left, in which he might *defraud the estate*, and that was by charging the estate with the stocks on hand at a higher price than he had a right to do. Mr. Brooks does not fail to avail himself of the opportunity of making *this imputation also*." [L. p. 66.]

"Is it not deplorable to see a gentleman, in Mr. Brooks's position, groping about in utter darkness and ignorance, to find some *excuse* for attacking the *honour* of the living and the *dead*." [L. p. 72.]

"Is it to be believed, unless Mr. Brooks means to impeach the character of Mr. Kirk Boott also, that that gentleman would have recommended, or allowed to be selected, a person, who had been guilty of the *moral delinquencies* attributed by Mr. Brooks to Mr. J. Wright Boott? [L. p. 102.]

For Mr. Lowell's satisfaction, as well as that of the reader, I make it known, that the Italics, in these sentences, are my own—for Mr. Lowell is very punctilious and sensitive on the subject of Italics. [L. p. 83-4, 204.]

Quotations of this description might be made to a great extent from the pages of the "Reply." Is the charge just, fair, or true?

I defy Mr. Lowell to point out a single passage of my former pamphlet, which, being fairly taken in connexion with its context, and with the foregoing extracts from my pamphlet, and with other passages in it of like tenor, can . justify this charge.

CHAPTER III.

A LIMITED PUBLICATION MY LAST RESORT. A SINGULAR MISTAKE BY MR. LOWELL.

Not content with thus systematically misrepresenting me as a reviler of the honour and honesty of the dead, nor with constantly repeating the idea that my whole course of action, after the decease of Mr. J. Wright Boott, was directed to the finding of an excuse for publishing these defamations, Mr. Lowell even goes so far as to invent, or imagine, a fact or two, for the purpose of giving colour to these suggestions. Mrs. Lyman, he represents as a mere puppet in the hands of Mr. William Boott and myself, made, first, to set up an appeal against the probate of her brother's will, and afterwards to withdraw it, only to suit our supposed game of showing off a sham inquiry at law into the fact of Mr. J. Wright Boott's sanity, in order that the final failure of a trial, seemingly through her fault, but really, as Mr. Lowell suggests, at our bidding, might furnish the long-looked-for excuse for a publication. [L. p. 210.]

In confirmation of this statement, which is utterly destitute of foundation, he asserts, as a fact, that I, at first, interposed an appeal myself, as "trustee under the will of Mr. Kirk Boott of Lowell," in which capacity, he correctly states, I had no legal interest, to set aside Mr. J. Wright Boott's will. This, he thinks, upon the whole, could not have been a blunder of counsel, "after several months of preparation," which he supposes to have been expended in the cause, but rather attributes it to a deep design of mine, (in which my counsel must, of course, have participated,) to enter a fictitious appeal, in order that it might be defeated on technical grounds, in the higher court, and so "a better apology might thus have been afforded for Mr. Brooks's appeal to the public." [L. p. 209.] Now will it be believed of Mr. Low-

ell, who so piques himself upon his accuracy, and never admits a mistake, that his whole course of remark on this subject is founded upon a supposed fact, which never happened?

Upon this point, and the whole subject of my actions and motives, so far as they could be known to others, with whom I was confidentially dealing as my counsel in these matters, I now submit the following letter:—

LETTER FROM MESSRS. GARDINER AND BARTLETT.

Boston, March 31, 1848.

EDWARD BROOKS, Esq.

DEAR SIR,

In compliance with your request of the 22d inst., we make the following statement.

In the summer of 1845, we were retained by you as counsel, and in the fall of that year, we were retained as counsel for Mrs. Lyman also,—to oppose the probate of the will of the late Mr. J. W. Boott.

The ground of the proposed opposition was the alleged legal incapacity of the testator to make the will in question, by reason of a partial insanity, supposed to have affected him in that particular act.

Mr. Franklin Dexter acted with us, as counsel, for a short time; but he was about going to Europe, and was retiring from professional engagements. We consider his connexion with the case to have ended with the hearing in the Probate Court, which he was present at, but took no active part in.

You were urgent to have the case brought to a hearing as early as possible; but it was not in fact heard till late in October, although the will had been filed for probate in March.

Before we were spoken to in behalf of Mrs. Lyman, and while acting exclusively as your counsel, we had several conferences with you and with Mr. William Boott. Most of the facts, bearing on the question of insanity, which you have since stated in a printed form, were then communicated to us, and with them some, as within your or his personal knowledge, which you have not thought proper to disclose in your printed statement, but which tended strongly, in our opinion, to corroborate the other proof of Mr. J. W. Boott's derangement of mind on certain subjects. Your own belief of the testator's monomania was always expressed to us in the strongest terms; and so was Mr. William Boott's;—and from the facts stated to us it appeared to be well warranted.

We were very early informed, that neither you, nor Mr. William Boott, desired to alter the disposition of the property, except on Mrs. Lyman's account, who was represented as hardly dealt by, and in need of all she might be entitled to. Your personal objects, in proposing to contest the will, as made known to us, were, to compel the production, by Mr. Lowell, of a letter written by Mr. J. W. Boott, shortly before his death, enclosing the will, and said to contain certain

charges against you; and also to establish, judicially, the insanity of the writer, as the best answer to those charges, and to other imputations respecting your conduct and motives.

Shortly before the hearing in the Probate Court, we were, jointly with Mr. Dexter, consulted, for the first time, by yourself and Mr. William Boott, in behalf of Mrs. Lyman. We all met with you and Mr. William Boott, by appointment, for that purpose. After a consultation of some length, we concurred in the opinion that, viewing Mrs. Lyman's case professionally, and without regard to mere matters of feeling, which counsel could not judge of, hers was a proper case for the real trial of the validity of the will in the Supreme Judicial Court, where the final trial would necessarily be, according to the usual course of practice; and upon the facts stated to us, as capable of proof, including those confidentially communicated, we were all of opinion, that a jury would probably be satisfied, that the testator was not of sound mind, in the sense of the law, when he made his will, cutting her off from any share of his property; and if so, that it would be set aside in her favour.

We were informed, that Mrs. Lyman had requested this consultation on her account; and we saw, then, or afterwards, a letter from her to you, dated Oct. 21, 1845, directing you to employ us as her counsel, and desiring us to understand that it was her own voluntary act.

We had understood, before, that neither Mr. William Boott, nor yourself, proposed to take, for your own benefit, any share of the property, if the will were set aside. You were, besides, considered to be material witnesses on the question of insanity. Hence it was arranged, that your rights and interests in the property should be assigned to Mrs. Lyman. A deed for that purpose was, soon after, prepared, and was executed by yourself and Mrs. Brooks, and by Mr. William Boott, conveying your respective rights, as heirs at law of Mr. J. W. Boott, in trust for Mrs. Lyman;—which deed would take effect when executed by and delivered to the trustee therein named.

This consummation was withheld till after the preliminary hearing in the Probate Court, in order to preserve your right to appear there in person, as you preferred to do, for the single purpose of calling for the letter above mentioned. There was no previous arrangement, as to the particular right, or capacity, in which you should make that call; but the course proposed was, that you, as a nominal party, should hear the proof offered of the execution of the will, and introduce evidence of the testator's insanity, sufficient for a *prima facie* case, and then call for the letter, both as a paper containing statements, respecting yourself, which would have a material bearing on the point of insanity, and also as a paper accompanying, endorsing and republishing the will, with directions concerning the disposition of property. The sole object of the hearing, on your part, was to present, on this double ground, the question, whether a production of the letter, by Mr. Lowell, either as a party, or as a witness, should, or should not, be ordered in that court. Upon its decision, either way, your appearance was to be withdrawn, and an appearance entered for Mrs. Lyman, as the real party having a pecuniary interest, and intending to try the validity of the will.

The hearing took place on the 24th, 25th, and 28th of October, 1845, and was conducted conformably to this previous arrangement.

Mr. Lowell has fallen into an error in stating, at page 209 of his pamphlet, that, after the judge had ruled the points in his favour, "the learned counsel, who appeared for the remonstrants, stated, that he would withdraw all opposition in their behalf individually, and enter an appeal to the Supreme Court in the name of Edward Brooks, trustee under the will of Mr. Kirk Boott of Lowell."

No such notice was given. No appeal was ever suggested, or thought of, by either of us, at that hearing, except for Mrs. Lyman.

Mr. Lowell appears to have confounded two distinct matters,—one occurring on the 24th, and the other on the 28th, of October. This we are enabled to state with certainty, on comparing our present recollections with the very full and accurate minutes taken at the time, in which the fact appears, distinctly, as now stated.

On the 24th of October, after the subscribing witnesses of the will had completed their testimony, the judge asking who appeared to oppose it, Mr. Bartlett, at first, answered, on your suggestion, "I appear for Edward Brooks, trustee for the children of Kirk Boott." Mr. Lowell thereupon remarked, that "as Mr. Kirk Boott died before Mr. Wright Boott, Mr. Brooks can have no interest in this property as trustee for his children." Mr. Bartlett said, "then I appear for Edward Brooks and wife,"—and immediately called Mr. Robert C. Hooper to the stand. Mr. Green, however, requested to be examined first, which was agreed to.

After his and Mr. Hooper's examination, which latter was at some length, the intended call for the letter was made. This led to a discussion of the legal rights of the parties on that point, which continued till the adjournment of the court.

On the following day, (Oct. 25,) it was resumed; and after much argument on both sides, the judge ruled, that Mr. Lowell had such an interest, under the will, that he was not compellable to be examined as a witness, or to produce any paper in that capacity;—and that, in order to bring, properly, before the court the further question, which had been argued, whether he might not be required to file the letter as a testamentary paper, or otherwise to produce it, as a party in the cause, by reason of its supposed bearing on the question of insanity, an affidavit of the facts and a written motion ought, first, to be filed. The further hearing was then adjourned to Oct. 28.

On that day, affidavits on each side being filed, the question of ordering the letter to be produced was submitted, without further argument; and the judge ruled against the motion.

Mr. Bartlett then gave notice, that Mr. and Mrs. Brooks withdrew from the cause.

A question thereupon arose about costs, which were, at first, claimed by Mr. Lowell, but afterwards waived. As counsel for Mrs. Lyman, we thought it desirable to have this trifling point distinctly settled, before any other step was taken, lest you should be objected to as a witness in the Supreme Court, on account of your liability for costs in the court below.

When that point was finally disposed of, Mr. Bartlett gave notice,

that he would now enter an appearance in the cause for Mrs. Mary Lyman, but should offer no further evidence, nor any remarks on that, which had been introduced.

The judge then said, that, upon the testimony of the subscribing witnesses, he should allow the will, remarking, however, that his decree was rather *pro forma*, as some evidence of hallucination had been shown.

Mr. Bartlett, upon that, gave notice, that Mrs. Lyman would enter an appeal in due season.

One of Mr. Lowell's counsel then announced the resignation of his trust as executor; and Mr. Lowell himself added, that he desired, also, to resign the office of special administrator, to which he had been formerly appointed.

Some conversation followed respecting a successor to the latter office, and it was agreed, among the counsel, that Mr. F. C. Loring might be appointed.

This ended the proceedings in the Probate Court.

The only allusion, in the course of them, to any supposed interest of yours, as trustee for Mr. K. Boott's children, was, as above stated, at the first entry of an appearance, (October 24,) which was regarded by us as merely formal, and to make you a temporary party, in a hearing not expected to decide any thing, except, whether the judge of probate would, or would not, order the letter to be filed. The only notice given of an intended appeal was, as above stated, on the 28th of October, in the name and behalf of Mrs. Lyman, the only party, whose pecuniary interest was considered by us to be at stake, and for whom we were to conduct the real trial, pursuant to the previous arrangement.

Her appeal was accordingly entered, within the thirty days allowed by law; and such further steps were taken, in preparing for the trial, as her counsel thought advisable.

The most important of these was the filing of a bill of discovery against Mr. Lowell, to compel, in that form, the production of the letter. That bill was filed January 17, 1846. Mr. Lowell's plea, in avoidance of the discovery sought, was not filed till the 26th of March following. We doubted, whether it would be sustained, and were desirous to bring it to an early hearing, thinking that a previous knowledge of the contents of the letter might aid, materially, in preparing for the main trial. There was no opportunity, however, for a hearing on the plea at the March term. It necessarily went over to another; and the main cause went with it, waiting the disposal of this preliminary question.

In regard to any agency of yours, or of Mr. William Boott's, about the cause, after the appeal, the facts, so far as known to us, are as follows:—

Mrs. Lyman, living out of town, communicated with her counsel only by an occasional note, or message. We considered ourselves charged with the general conduct of the case, and empowered to take such steps towards it as we thought for her interest, regarding its pecuniary result, and every point affecting herself. We sometimes conversed with you, as the friend nearest at hand, when information was

wanted. We do not remember to have seen or heard from Mr. William Boott on the subject at any time pending the appeal. Mrs. Lyman's signature to the bill of discovery was obtained by you, at our request. We did not consider either you or Mr. William Boott as having any interest in the suit, except as it was, incidentally, desirable to each that Mr. J. W. Boott's insanity should be established by a verdict.

After the continuance of the cause to the November term of 1846, the first communication we had from any body on the subject was a note, dated September 25, addressed to us jointly, from Mrs. Lyman, written upon her return, as we understood, from a visit at Northampton, to apprise us of her "change of purpose with regard to a further prosecution of the suit upon Mr. J. W. Boott's will." The reasons assigned had no relation to the merits of the question, in a legal point of view, but turned, entirely, on points of feeling, in regard to the memory of her deceased brother, which counsel could appreciate, but could not advise upon.

We have, since, seen notes, dated the 25th and 27th of the same September, from Mrs. Lyman to you, and to Mr. William Boott, informing each of you of her altered determination.

You consulted us, shortly after, to know whether there was any way, in which you could be reinstated as a party in the cause, or otherwise bring the question of Mr. J. W. Boott's sanity to the test of a legal investigation. We advised you that we saw none; and that if Mrs. Lyman adhered to her present determination, (which, however, could not be carried into effect until the court should next sit, in November,) the appeal must be withdrawn, and the will be thereby set up. You gave us to understand, repeatedly, pending this controversy, that you should be very unwilling to advise, or influence her, respecting the suit, lest she might act, or be supposed to act, from regard to your position and wishes, rather than her own.

Before the sitting of the court, we received a second note from Mrs. Lyman, repeating her desire that the suit should be dismissed. Both the appeal and the bill of discovery were dismissed accordingly, early in the November term.

We have never doubted, and do not now doubt, that Mrs. Lyman acted upon her own judgement, after taking the advice of counsel and friends, when she made her appeal; nor that she acted upon her own views and feelings, exclusively, and from the disinterested motives she assigned, when she discontinued it. Mr. Lowell's suggestions that she may have been guided, in this, by your advice, or that of Mr. William Boott,—that she moved throughout in mere accordance with your or his desire,—and that there never was any serious intention of bringing the case to trial, are, so far as we have any means of knowing, or forming an opinion, quite unfounded and mistaken. Among our means of knowledge are several notes of instruction, or inquiry, received by one of us from Mrs. Lyman, in her own hand-writing, during the pendency of the suit.

We are bound to make the same remark concerning his suggestion that you always intended an appeal to the public through the press, and were, from the first, only seeking an opportunity, or excuse for it.

The fact, known to us, is, that, when Mrs. Lyman determined to

withdraw her appeal, you expressed to us your regret at the loss of the opportunity you had counted upon to set certain matters right, through the means of a public trial; but you also expressed a degree of satisfaction, that you might now consider yourself fairly excused from the necessity of making disagreeable disclosures, with that view, by circumstances beyond your control, and for which you were nowise responsible. We had no doubt, at that time, that the whole controversy was ended in every form.

It was not till after the dismissal of Mrs. Lyman's suit, and a day or two before your first letter to Mr. Lowell, dated November 28, 1846, that you told us of information, as just received by you, respecting testimony of Mr. Lowell at the inquest, which did not appear in the official return, and which you thought presented a new state of facts, requiring some action on your part, in reference to Mr. Lowell personally. After consulting us, you expressed your determination to call on Mr. Lowell, himself, to state what his testimony was, and to follow it up by such further action as his answer might suggest. It seemed to us possible that this course might lead to mutual explanations, calculated to remove all difficulty between you. The correspondence, afterwards printed, speaks for itself.

We may properly add, that, in the many conferences held with you, from the time of our being first retained as your counsel, we do not remember, or believe, that the idea of publishing any thing, otherwise than by a trial, respecting the unfortunate dissensions, in which you had been involved, was ever suggested, until the period of that correspondence; and then it appeared to arise from the belief you expressed, that Mr. Lowell had not dealt by you fairly and frankly; that you had been injured in consequence in the estimation of others; that he had no disposition to relieve you from that consequence, or to make any explanations; and that, in the absence of any legal remedy for such a case, there was no other course left for you than that, which you took.

Regretting much that your correspondence with Mr. Lowell did not lead to a different result, we are, very respectfully,

Your obedient servants,

W. H. GARDINER,
SIDNEY BARTLETT.

This letter requires no comment. But the passage it refers to, in Mr. Lowell's pamphlet, relative to certain proceedings in the Probate Court, is remarkable enough to be quoted at large. It is this:—

“On the hearing before the Probate Court, after the judge had ruled the points, there raised, in my favour, the learned counsel, who appeared for the remonstrants, stated that he would withdraw all further opposition in their behalf individually, and enter an appeal to the Supreme Court in the name of Edward Brooks, trustee under the will of Mr. Kirk Boott, of Lowell. This announcement was certainly

an astounding one. Mr. Kirk Boott died eight years before his brother, and of course could not be one of his heirs-at-law. Was this a blunder? It certainly seemed to me hardly credible that it was so, after several months of preparation, with the aid of counsel, whose learning and astuteness are well known. Was it not rather a nominal appeal, of which it was expected that I should take advantage to defeat them at the trial? It might then have been said, that they had been ready to meet the question before the Supreme Court, and that I had evaded it on merely technical grounds. A better apology might thus have been afforded for Mr. Brooks's appeal to the public.

However this may have been, I had it evidently in my power to secure the establishment of Mr. Boott's will, by simply allowing them to appeal, in the form they had themselves proposed. But I remembered what Mr. Boott himself would have wished me to do under such circumstances; and, following his own precedent, I threw aside the immunity thus offered to me, and informed the court, that the appeal in that form would not lie. The appeal was then entered in the name of Mrs. Mary Lyman." [L. p. 209.]

The self-complacency of this paragraph is amusing enough, when it comes to be seen, by the foregoing letter and the original minutes therein referred to, that Mr. Lowell is, all the while, mistaken in his fact. He has mixed up occurrences that were four days apart, and had no relation to each other. A remark made in reference to a proposed first appearance, for the purposes of that particular hearing, he ascribes to the proposed entry of a final appeal, after the hearing was over. The difference is, that, whether I were allowed to appear, at the hearing, in one capacity or another, rightly or wrongly, was totally immaterial. All I wanted was a temporary standing in the Probate Court, that would authorize me to move for the production of the letter; and, if no objection had been taken, then, to my appearing as trustee, however irregular that might have been, it would have answered all my purposes perfectly well. But, when it came to the case of an *appeal*, it was fundamental that the appeal should be rightly taken by a proper party. Otherwise it would be a nullity.

As trustee under the will of Mr. Kirk Boott, of Lowell, I could not appeal—and never proposed to—nor in fact did any body appeal, or propose to appeal, as appears by the foregoing letter, except Mrs. Lyman, in her own right. Yet Mr. Lowell asserts otherwise in the most positive terms, and,

by an anachronism, which transposes a certain remark from the 24th to the 28th of October, and by some other species of license, which affixes the remark to a different event from that, to which it belonged, contrives to make a right of property apparently dependant upon it, when, in truth, at the time the remark was made, nothing depended upon it but the question, whether, in point of form, I should call for the letter in one person's name and behalf, or another's.

Having thus fabricated a basis, out of a mere error of memory, he proceeds to build upon it a theory, concerning my *motive* in claiming the supposed appeal under *false colours*; and, what is curious enough, he not only remembers with perfect distinctness, and asserts with characteristic positiveness, that I did so claim the appeal, but he remembers also the high-toned feeling, which induced him, on that occasion, to interpose and correct what he *saw* to be a mistake, *fatal* to the interest of his opponents. “*I remembered,*” says he, “what *Mr. Boott himself* would have *wished* me to do under such circumstances; and *following his own precedent, I threw aside the immunity thus offered me, and informed* the court that the *appeal in that form would not lie*”! This was truly a magnificent generosity. How unfortunate that it should turn out to have been only a dream!

Such an instance of mis-recollection in a gentleman, who is so ready to charge inaccuracy upon others, and so unaccustomed to admit the possibility of any mistake of his own, is the more unaccountable, as the hearing in the Probate Court was quite a modern transaction, in which he took an active part and the strongest interest. I dwell upon it, however, not so much for its own importance, as for the sake of the illustration it affords, that Mr. Lowell is quite as likely as his neighbours to mis-remember some older facts, that did not deeply concern him at the time, and perhaps more likely than they to add a little imagination to his memory. What would he have said of me, were we to change places in this matter? One may easily imagine, by what he does say in cases of error far less remarkable. If I may be allowed to try my

hand at an imitation, I think we should have seen something after this fashion.

"It is a very important question, what degree of reliance is to be placed upon a statement so deliberately made and so circumstantial in its details." [L. p. 95.] "It throws some light upon the accuracy of Mr. Brooks, an accuracy vital to almost every issue he has raised." [L. p. 123.] "Mr. Brooks is wrong, as usual, both in his facts and his law." [L. p. 72.] "With his usual accuracy" [L. p. 93.] he confounds an appearance in a cause with the claim of an appeal—a request to be heard on a call for a letter, with the demand of a statute right to vacate a decree. "So much for Mr. Brooks's law. Now for his facts." [L. p. 73.] He asserts positively, that I announced my intention to appeal as "trustee under the will of Mr. Kirk Boott of Lowell." [L. p. 209.] I never did any such thing. Nobody proposed an appeal but Mrs. Lyman. A remark was made about my *appearing* as such trustee to call for a letter, and he audaciously describes it as claiming in that capacity a final appeal of the cause. It was made on the 24th of October, and "Mr. Brooks has the coolness" [L. p. 92.] to speak of it as if it were made on the 28th. But "this contempt for chronology is characteristic of Mr. Brooks's mind." [L. p. 193.] Besides, he not only perfectly remembers a fact, which never happened, but he remembers it with a circumstance. He calls to mind the sentiments of magnanimity, which filled his own bosom, and overflowed from his lips, upon the occasion of an event, which he himself has invented. "This requires a peculiar constitution of mind. To me it would be impossible." [L. p. 12.] He goes even so far as to build consequences upon his imaginary reminiscence. He sees in it a motive of cunning contrivance on my part, to forge an excuse, a year or two before its time, for a publication, already conceived by its author, and designed to be launched at some distant day to calumniate the dead. Now when such grave charges are founded upon such egregious blunders, the man who makes them cannot be allowed "to shelter himself behind his own ignorance." [L. p. 44.] Feebleness of memory, and incompetency to understand legal

proceedings, are qualities, "which may be pardonable in themselves; but a gentleman who is afflicted with them has no right to convert them into weapons against his neighbours." [L. p. 44.] "Such aspersions may answer a temporary purpose; fortunately they always vanish before the first ray of truth;—

‘No falsehood can endure
Touch of celestial temper, but returns
Of force to its own likeness.’” [L. p. 143.]

This, or something near it, is what Mr. Lowell would have been likely to say of *me*, under similar circumstances. It is a specimen of his mode of dealing with such matters, scarcely over-coloured, for it is nearly all his own language.

Now I shall not follow the example he sets, by imputing to him *habitual* and *universal* inaccuracy, in consequence of this, and of other *more important* mistakes, which will be pointed out in the course of these remarks. On the contrary, I readily concede to him general habits of exactness in business, clear perceptions, and a good memory, but not papal infallibility.

Neither shall I follow him in assuming a tone, which might seem to arrogate to myself some unusual perfection of human faculties. But, I trust I shall make it appear, that, in matters of business, I generally know what I am about, and remember the substance, at least, of what is important to be remembered. When a mistake is pointed out to me, if it really be a mistake,—for many, charged by Mr. Lowell, are *his* mistakes and not mine,—I shall not only frankly admit it, but do what I can to repair it; and then ask the reader to consider, after all proper corrections are made, how far the substantial merits of the case are affected.

Perhaps, in this connexion, and before proceeding to the main topics of discussion, I may as well notice some of the most striking of the errors, or supposed errors, of my former pamphlet, which Mr. Lowell holds up with such an air of triumph to his readers, in proof that my statements, generally, cannot be relied on. I do not understand that he intends, any where, to impeach my *veracity*. Indeed, it is

remarkable, that he does not undertake, except, I believe, in one single instance, and in that he will presently find himself much in the wrong,—to *contradict* my report of any of his own conversations with me, or remarks made in my presence, though many are referred to;—a tacit admission, one would think, that my memory cannot be, habitually, quite so inaccurate in such matters, as he would have it believed. He, nevertheless, makes this sweeping charge of gross habitual inaccuracy and defective memory, [L. p. 109, *et passim.*]; and couples it with the allegation that nearly all the important facts, stated in my pamphlet, rest upon my own memory without further proof, [L. p. 81.]; and, consequently, that none of its statements can be trusted. We shall see, as we proceed, how much, or how little, that is essential to the merits of this controversy, does really depend on my unassisted memory; and how far that is successfully impeached. But this is matter for another chapter.

CHAPTER IV.

MY LETTER TO MR. WELLS.

The most remarkable instance of plain mistake, which has been pointed out, is in what I supposed, at the time of preparing my pamphlet, to be the exact language of part of a letter to Mr. Wells, which I intended to extract. I took it from a supposed copy in my own possession. Mr. Lowell, having obtained the original from Mr. Wells, has printed the whole letter, and I believe correctly. He has also printed, in parallel columns, to make the dissimilarity as conspicuous as possible, 1. The extract, which I had made, consisting of *four sentences*, as they stand in my copy, with the common concluding words of a letter, “very truly

yours, &c."—2. The *same* sentences, as he says they stand in the original, *adding two other sentences* before the concluding words, "yours, &c.," and adding, *after that, a postscript*. Hence, the one citation is about twice the length of the other; and since I had spoken of my extract as the *concluding* part of a letter, and had added the words, "very truly yours, &c." the difference certainly seems, at the first look, quite unaccountable.

The sight of it, on Mr. Lowell's page, immediately brought to mind a circumstance, not adverted to, at the time of my making the quotation, as affecting the four sentences in question.

The variance happened in this way. The letter itself was very hastily written;—its style shows that;—and it was immediately sent, without the precaution of taking a copy. More than a year afterwards, it came to be alluded to in a correspondence, which had arisen between Mr. Wells and Mr. William Boott, in the months of November and December, 1843; and, in consequence of some remark about it, Mr. Wells sent the letter to Mr. William Boott, for his inspection. Mr. Boott, afterwards, mentioned the circumstance to me, in consequence of the question, which had arisen between him and Mr. Wells. My attention being thus drawn to it, I requested him to let me have the letter for a short time, intending to make a copy. Mr. Boott, accordingly handed it to me. I had proceeded in the making of a copy through nearly the whole letter, (which is a pretty long one,) and as far as the *end of the first of the four sentences* now in question, when, being interrupted, I put the copy into my desk, and the original into my pocket. Soon after, Mr. Boott called at my office, and informed me that Mr. Wells had asked for a return of the letter. Not wishing to detain it a moment under such circumstances, nor reflecting that it would leave me with a copy not quite complete, I immediately gave it up to Mr. Boott. A day or two afterwards, on taking the copy from my desk, and seeing where I had left off, I added, from memory, the *three next sentences*, *being all that referred to money matters*, and of

which I thought I could recall the language, as well as the ideas. Of the residue, which I thought lay entirely in the postscript, I merely made a memorandum, without undertaking to set down the words.

This is the explanation of the way, in which the discrepancy arose ; and, in looking at my copy, *four years afterwards*, when I was preparing my pamphlet, it did not occur to me that there was any part of it, which had not been literally copied, *except* the part referred to in the *memorandum of the postscript* at its foot. I therefore took the four sentences, which I wished to use, not doubting that *they* conformed, precisely, to the original.

Now on looking at the *whole* letter, and adverting to the occasion, upon which I referred to it, it will be seen, that the only subject of fair comparison lies in the *four sentences, which I intended to extract*. They are the *only parts* of the letter, which have any reference to my *pecuniary* dealings with Mr. Wells ; and it was *solely upon that subject* that I referred to the letter at all, in a note, the object of which was to show, that I had not intended to act *oppressively* towards Mr. Wells, as had been represented, *concerning a certain mortgage*. [B. p. 137.] In respect to my breach of intercourse with Mr. Wells, and its causes, I purposely alluded to them only in the most general terms, and said, expressly, that, “whether I was right or wrong, in taking the notice of this, which I did, is a point, which I am not anxious to clear up, it being a matter of feeling, depending on circumstances requiring a long explanation, and which, perhaps, others, after all, might not appreciate ; but I should be sorry to be thought, by my friends, guilty of the meanness and injustice of using my power as a creditor to do an essential injury to an old friend, because a difference had arisen between us. It is on this point *only*, that I wish to correct misrepresentation.” [B. p. 138.] Accordingly, after stating the other facts in relation to it, I said, “I concluded a letter, written in no unfriendly spirit towards Mr. Wells, (though I spoke of Mr. Wright Boott in it, under the provocation of the moment, in harsher terms than I should now deliberately approve,) in the

following words," [B. p. 138.] setting out the quotation in question, which I thought to be the actual conclusion (as according to my copy it is,) of the letter, *without its postscript, which I did not intend to quote, or allude to.*

The whole letter, postscript and all, except the four sentences concerning pecuniary relations, it will be seen, referred to matters of private history, which had no connexion whatever with the point specified, and matters, which, from motives of kindness to Mr. Wells and his family, as well as motives of respect to the memory of the deceased, I particularly wished to avoid detailing and explaining to third persons. This is now made impossible by the act of Mr. Lowell. He has chosen to print *the whole letter*. I shall have occasion, therefore, by-and-by, to return to the subject of my correspondence with Mr. Wells, which has now become, through Mr. Lowell's instrumentality, *the property of the public*; and the reader will then find this letter reprinted by me with the explanations, which belong to it, and which, unless I am much mistaken, will give him an idea of its merits, very different from that, which may have been derived from Mr. Lowell. At present, I wish to confine myself to the *discrepances* between my quotation and the original, with a view of seeing what they amount to, as evidence to support Mr. Lowell's charge of a general habit of inaccuracy and defective memory.

In the first place, I repeat, that the only fair subject of comparison is the part, which I *intended* to quote. In the next, I remark, that the variations, there, from the original, are, under the circumstances above stated, no great proof of *general* incorrectness. My copy, made at the time and in the manner above-mentioned, corresponds, precisely, with the original, as printed by Mr. Lowell, through upwards of a page and a half of that print, and down to the end of the sentence, beginning "There are some matters of business between us," &c.;—which sentence my quotation began with. The remaining three sentences of the quotation are those *not copied* at all, but which I *wrote down from memory*, in December, 1843, and quoted *four years afterwards*, without ad-

verting to that circumstance, on the supposition that they were an exact copy.

That the reader may see, precisely, what the departures from the original are, in these four sentences, and that they do not essentially vary the ideas, I now set them side by side, in Mr. Lowell's fashion ; and that the reader may, also, see with what fairness Mr. Lowell makes comparisons, I have added, as he does, in one of the columns, all of the letter that follows :—

FROM MY COPY.

FROM THE ORIGINAL,
AS PRINTED BY MR. LOWELL.

1. There are some matters of business between us, which, as we cannot conduct them in the pleasant manner we have done, I wish to have closed.

2. The mortgage on your estate, I presume, you will find no difficulty in transferring ; as it is worth much more than its cost.

3. I should like to have it settled within ten days, or a fortnight, if convenient to you.

4. The other money matters between us are of no consequence.

Very truly yours &c.

EDWARD BROOKS.

1. There are some matters of business between us, which, as we cannot conduct them in the pleasant manner we have done, I wish to have closed.

2. The mortgage I hold on your estate you can, no doubt, easily transfer to some one else, as the estate is worth a good deal more.

3. Pray do so, and if possible, within a fortnight.

4. Our other concerns are not important.

5. You will some day see this business in its true light, though I have no hope that you will do so now. I suppose it is intended for some good purpose, that one, and he, let us hope, not in his right mind, should poison the peace of so many.

Yours &c.

EDWARD BROOKS.

P. S. You must see that while you, the eldest member of the family, countenance this man, by allowing him to go without remonstrance, it is virtually taking his part.

Mr. Lowell remarks "that the words not only quoted, but emphasised, by Mr. Brooks—"if convenient to you"—are not in the original letter, and would have materially modified the

peremptoriness of the requisition." [L. p. 124.] He does not pretend that the other variations materially affect the sense. Now I beg to ask, what there is so particularly *peremptory* in these words of supplication? "Pray do so, and, if possible, *within a fortnight.*" Do they really mean, or would they convey to Mr. Wells, any thing more than the words, "I should like to have it settled within *ten* days, or a fortnight, if convenient to you?" They certainly did not to my own mind; for the latter phraseology was, of course, intended, in a copy for my own use, to be identical with the former. That Mr. Wells did not think the words, actually used, so very peremptory, as Mr. Lowell thinks they are, is evident from the manner, in which he spoke of my request, in his letters to Dr. Boott, for which I refer to the note on this subject in my former pamphlet. [B. p. 137.] I may refer, also, to the letter from Dr. Boott, which contains the extracts from these letters of Mr. Wells. It will be found printed in the course of my present remarks. But Mr. Lowell, of course, knows better than Mr. Wells. At any rate, it is clear enough, from the explanation now given, that the variations from the original, in the four sentences quoted, were purely accidental, and not made for the purpose of mending my case. Indeed Mr. Lowell does not intimate otherwise. But his farther remark is, that "it is all-important that his [Mr. Brooks's] accuracy should be tested, wherever he has afforded us an opportunity of doing so. A more correct opinion can thus be formed of the reliance to be placed on such of his reminiscences, as cannot be subjected to the same ordeal." [L. p. 125.]

Now, considering that this letter had been written more than fourteen months before I began to make a copy of it; that I had not even seen it in the interval; and that, after copying to a certain point, the letter itself was given up,—the residue having been only hastily glanced over,—and that I undertook, a day or two after, to set down this part of it from mere recollection, my ability to recall its ideas so exactly, and its language so nearly, I think I may claim as proof of a *tolerably good* memory, instead of one so "signally treacher-

ous," [L. p. 95.] as Mr. Lowell would have his readers believe. At any rate, I was not so much out of the way as Mr. Lowell is, in *his* "reminiscences" of the proceedings in the Probate Court, where he turns the whole idea topsy-turvy, by remembering a particular expression, and imagining it was used for an occasion, which never happened, but which he, nevertheless, thinks he remembers, with a number of circumstances altogether visionary.

I admit that Mr. Lowell has, in this instance, caught me in a mistake, which may go for what it is worth. But as to his printing, as a part of the comparison, all that following part of the letter, which begins "You will some day see this business in its true light," &c., that is only another specimen of Mr. Lowell's fairness in argument. It, obviously, has nothing to do with the money concerns, which I was speaking of, nor with those parts of the letter respecting money matters, which were all I intended to quote; but relates, exclusively, to the subjects treated of in a former part of the letter, which I intended *not* to lay before the reader, for reasons that will soon be made obvious. This every body, who takes the pains to read the whole letter, will see.

It would have been as impertinent for me to have quoted, *in that connexion*, those *subsequent sentences*, which Mr. Lowell prints, as to have quoted the whole letter; and it is equally impertinent in Mr. Lowell to print them, as proof of my inaccuracy in quotation, or want of memory. My mistake was, at most, a mistake; in itself, of very little importance, and purely accidental. Mr. Lowell's, unluckily, cannot be set down either as unimportant or as an accident. He makes an appeal to the eye, by his parallel columns, which operates as a fraud on the understanding.

CHAPTER V.

THE LYMAN & RALSTON SETTLEMENT.

Another error, which I admit, and which Mr. Lowell makes a great handle of, lies in my account of a settlement between Mr. J. Wright Boott and his partners, Messrs. Lyman & Ralston, to which their wives and some of their creditors were parties.

The arrangements, growing out of the embarrassments of that partnership, were somewhat complicated in their details, and extended through a considerable period, in the years 1830 and 1831. In fact, different arrangements were made, at different times, within those years, up to the *final* settlement. One of them resulted in the negotiation of a mortgage of the Mill Dam Foundry to friendly creditors in Philadelphia, for the sum of \$30,000. By another, the reversionary interests of Mrs. Lyman and Mrs. Ralston, in their father's estate, were assigned to their brother, Mr. J. Wright Boott. The object and the effect of all the arrangements was to prevent a public failure, and to relieve Mr. Boott from pending endorsements for Lyman & Ralston, to the amount of \$30,000, and other existing, or apprehended, liabilities.

Both Mr. Lowell and myself, as friends of all parties, were consulted in this business, and took an active part in effecting Mr. Boott's extrication. Some of the details fell more particularly under my superintendence ; in others, Mr. Lowell was the more immediate and active agent. At the time of my writing respecting them, sixteen or seventeen years had elapsed, and I had nothing but my memory and a few letters from Mr. Kirk Boott, on the subject of his brother's embarrassments, to rely upon. It is not very surprising, therefore, that I should have fallen into some errors, concerning the details of so complex a matter, or should have viewed, as cotemporaneous, transactions, that were, in truth, separated

by a short interval. Neither is it very surprising that Mr. Lowell should be able to correct me, in these particulars, since he informs us, "the settlement with Messrs. Lyman & Ralston was made *by myself* [Lowell] in behalf of Mr. Wright Boott, and *all the original papers are still in my possession.*" [L. p. 109.]

It may be well, however, to see what the errors amount to, how much bearing they have on the main question, and how Mr. Lowell treats them.

My account of the matter was as follows :—

" It was found that \$30,000 might be raised upon a mortgage of the foundry, as a friendly, rather than a business, arrangement. But Mr. Wright Boott, and we as his friends, insisted, that if he should execute a mortgage of the Mill Dam Foundry, to raise funds to take up the note of Lyman & Ralston, it would be unjust ; since it would leave the balance due by Mr. Wright Boott, as guardian, unprovided for ; and this we were very anxious should be paid in full. I refer to the letters of Mr. Kirk Boott, in the appendix, for an explanation of our views on this point.

" It was finally arranged, that this mortgage should be made of the Mill Dam property, to raise the \$30,000, and take up the note of Lyman & Ralston for that amount, on condition that Lyman & Ralston, and their wives, both of them sisters of Mr. Wright Boott, should *assign to him* all their reversionary interest in their father's estate. Their present property, so far as received, had already gone ; and whatever was due to them, being due to their husbands, was merged in the partnership business. This arrangement was accordingly effected, in September, 1831, Mr. J. A. Lowell being one of the persons, who called on those ladies, for the purpose of procuring their signatures to the necessary papers." [B. p. 41.]

And I added—

" A release, so obtained, from his endorsement of Lyman & Ralston's note for \$30,000, was the only advantage ever realized by Mr. Wright Boott from the \$70,000 invested by him in the Mill Dam speculation. The mortgagee, who was one of Mr. Ralston's family, afterwards took possession, and foreclosed the mortgage." [B. p. 41.]

On this subject, Mr. Lowell,—who had remarked, shortly before, that "if Mr. Brooks had stated nothing, except so far as he was really informed, he would have omitted a large portion of his book," [L. p. 107.]—begins by remarking, that "the settlement effected with Messrs. Lyman & Ralston, in Sept. 1831, affords a good opportunity of testing the accuracy of Mr. Brooks's memory ;" [L. p. 107.] and, referring to parts of the statement above cited, he proceeds as follows :—

"Not one of these statements has a shadow of truth. Mr. Wright Boott received by that settlement, besides the reversions of his two sisters, which will be worth at his mother's death \$32,000, a payment in cash, or its equivalent, of \$7,624, making in all nearly \$40,000.

"The mortgage in question was not created as part of that settlement; on the other hand, it was expressly stipulated in the agreement, that it should be taken up, as a preliminary step to all further proceedings. It was accordingly discharged in October, 1831, and, of course, it was never foreclosed.

"Subsequent events have made Mr. Brooks familiar with the fact, that Mr. Boott's sisters assigned to him their reversionary interests; but he asserts [p. 41.] that this was a condition insisted on by Mr. Boott, before he would join in the mortgage of the Mill Dam Foundry; whereas that mortgage was made the year before, and the money went to the relief of those ladies' husbands." [L. p. 108.]

I had also stated that the "business of the Mill Dam Foundry, so far as Mr. Wright Boott's concern in it extended, was gradually wound up, leaving the residuum subject to the mortgage above mentioned, in which it was finally absorbed;" [B. p. 46.] and had expressed, in a different part of my pamphlet, an opinion, as follows: "I presume, before the business was finally wound up, his loss there, including interest, was not much short of \$100,000." [B. p. 115.] Upon these passages Mr. Lowell comments in the following language:—

"I do not doubt, that such is Mr. Brooks's judgement; and his presumption is undeniable. But he is evidently ignorant, that, by the settlement of 1831, Mr. Boott parted with his whole right, title, and interest in the Mill Dam Foundry, and had no more to do with its winding up, or the subsequent gain or loss, than Mr. Brooks or I had.

"In short, Mr. Brooks has not stated one single condition of that settlement aright.

"By this time, I think, it must be pretty evident that Mr. Brooks has undertaken to enlighten the public about transactions, of which he never knew any thing, or which he has completely forgotten." [L. p. 109.]

Now the only point of the original argument, on which all this discussion about the terms of the settlement bears, is this:—to determine what amount of property, whether of his own, or of his father's estate, Mr. J. Wright Boott had invested and lost, for all present available purposes, in that concern. In August, 1830, he admitted his investment there to be \$70,000, [B. p. 37.] which I understood to be the amount of the moneys actually paid in, without taking an account of

interest, on the one side, or of profits and losses, if any, on the other. The concern had been, at that time, about four years in operation, and it was continued, with Mr. J. Wright Boott a partner, more than a year longer, under the embarrassments of a heavy debt, "doubtful credit," as Mr. Kirk Boott states, [B. App. p. 19.] and a bad business. I see no cause, therefore, from any thing Mr. Lowell has disclosed, to alter my opinion, that, "before the business was finally wound up," and "so far as Mr. Wright Boott's concern in it extended," and for all presently available purposes, his immediate loss there, including interest, was not much short of \$100,000. I say "immediate loss," and "presently available purposes," with reference to the main question, which I had under discussion, namely, whether Mr. Boott had *kept good his trust funds*. Reversionary rights *in the fund itself* were not means of keeping the fund whole, nor to be counted as property for that purpose, and they carried no income to offset against accruing interest. At any rate, what I stated, on that subject, (the amount of loss,) was stated as opinion merely. I am not answerable for it as a statement of fact; and Mr. Lowell is at liberty to think my opinion presumption, or not, as he pleases.

What then is the *substantial* difference of *fact*, in our respective statements, as to the terms of the settlement, so far as they affected Mr. Boott's pecuniary position in respect to the trust fund? It consists in a sum of \$7,624, and no more, which Mr. Lowell says was paid to Mr. Boott in cash, or its equivalent, as part of that settlement. He furnishes no proof of it, beyond his own statement, although he says he has all the papers in his possession. But I take it, for my present purpose, to be so, and aver, that this is the only material fact, in the terms of the settlement, as disclosed by him, which I either "never knew" or had "completely forgotten," and therefore omitted to state. It is the only new fact, or variation from my statement, which affects the argument in the smallest degree; and I shall by-and-by restate the accounts with that correction. The reversions of the sisters, subject to their mother's life estate, what-

ever they may have been worth at the time of the settlement, I had myself stated were assigned to Mr. Boott as part of the final arrangement, though Mr. Lowell, instead of giving me credit for it, would cause it to be understood, by his account of the matter, that I had omitted that also.

All the other matters of detail, which Mr. Lowell says are erroneously stated by me, are of no consequence, if they are erroneously stated, except for the purpose of "testing the accuracy of Mr. Brooks's memory." Now I very readily admit, that, on looking back, through a vista of nearly seventeen years, upon transactions, in which I was only an adviser and agent for others, with no direct personal interest, and with no opportunity to refresh my memory, as Mr. Lowell does his, by examining original papers,—although I did remember "pretty well" the fact of the settlement, and its substantial result, and remembered, perfectly well, all that was essential to the main question under discussion,—my recollections of some immaterial details, for which I did not undertake to tax my memory very severely, were so far indistinct, that an arrangement, which terminated in the making of a certain mortgage, became blended, in my own mind, with the subsequent and final settlement, a few months later. I was wrong, therefore, in stating that "It was *finally* arranged that this mortgage should be made of the Mill Dam property, to raise the \$30,000, and to take up the note of Lyman & Ralston for that amount, on *condition* that Lyman & Ralston and their wives, both of them sisters of Mr. Wright Boott, should assign to him all their reversionary interest in their father's estate." But, though wrong in making the mortgage and the assignment *cotemporaneous*, I was not wrong in the main fact, that this assignment of the reversionary interests was one condition and principal element of the *settlement*, as finally arranged. And if Mr. Lowell is right in his recollections, I was not *very much out*, in *connecting* this assignment of reversionary interests with the negotiation about the *mortgage*; since he states, in another place, that when Mr. Boott *first* called on Lyman & Ralston to *give him security for his endorsements*, "they

replied, that he had already security in his own hands in *the reversionary shares* of their wives in the trust funds, which they were *ready legally to assign to him for this purpose.* This would not answer, and *a long negotiation ensued*, which *ended* in Mr. Boott's *joining in a mortgage* of the Foundery property to the amount of \$30,000, for their benefit." [L. p. 77.] So that my unassisted memory, if somewhat inexact, was not "*signally treacherous,*" even there; since such an assignment, it seems, was part of the *same negotiation*, which ended in Mr. Boott's joining in the mortgage, though the actual execution of that assignment did not in fact occur till the final settlement of their accounts, several months afterwards. As to the suggestion, "that subsequent events," only, "have made Mr. Brooks familiar with the fact that Mr. Boott's sisters assigned to him their reversionary interests," I refer Mr. Lowell to the deed of assignment; by which he will see, that I was a witness to the signature of all the parties, and took their acknowledgement, [B. app. p. 22.] he himself being a witness only to that of Mrs. Lyman. Mr. Lowell, however, now claims, characteristically enough, the whole merit of having negotiated that settlement; and, for myself,—being rather ashamed of that feature in it, by which the property of the wives was taken to pay the debts of their husbands,—I am quite content that he should have it.

I was also wrong in stating, that "the mortgagee, who was one of the Ralston family, afterwards *took possession and foreclosed the mortgage.*" But Mr. Lowell is hardly right, when he denies this, in stating, as he does, that the terms of the negotiation, as finally settled through him, were, that "the whole property in the Mill Dam Foundery was to be *sold to a joint stock company,*" [L. p. 79.] without stating who that company were, and what became of the property; because the denial and the assertion, taken together, without further explanation, convey a false impression. The truth is, that I was wrong as to the *form*, in which the thing was done, but right as to its *substantial effect.* It is true, as Mr. Lowell states, that the mortgage,

made late in 1830, was discharged at the time of the final settlement in 1831, instead of being held and foreclosed ; and it is true that the property was sold to a joint stock company. But that, which he has omitted to state, is, that this joint stock company consisted, entirely, of the Messrs. Ralston themselves and Mr. Lyman,—the latter having little more than a nominal interest, in consequence of his indebtedness to his partner, Mr. Ralston ;—that stock in the company was issued, or assigned, in lieu of the discharged mortgage, as a substituted security ;—that the concern struggled along, in this new form, several years longer, with some other nominal stockholders, brought in as agents to conduct the business, or to keep up the corporate organization ;—that the business never prospered, and was finally wound up with a great loss to Mr. Ralston ; (that fact, indeed, Mr. Lowell does state in another connexion, page 202 ;)—and that the whole property passed, in consideration of their advances, into the hands of the Ralston family, by whom it was long held in this market for sale, and was recently sold for *thirty thousand dollars*,—exactly the amount of the original mortgage, without interest.

This I hold to be pretty much the same thing, in effect, as an entry and foreclosure under the Ralston mortgage. For, the fact, of the supposed foreclosure, was stated, only to show how little the property turned out to be intrinsically worth ; and that Mr. J. Wright Boott never got any thing out of it, except what he got by the settlement,—which Mr. Lowell admits. The property passed entirely out of his hands ; and that was all that was material to my statement.

Most of the facts, now above stated, are very notorious ; and, for the rest, I refer to the records of the corporation, and to the following note from its present clerk and treasurer :—

NOTE FROM MR. SAMUEL NICOLSON.

DEAR SIR,—The property of the corporation, called “the Proprietors of the Mill Dam Foundery,” of which I am the present Clerk and Treasurer, was lately sold by the Messrs. Ralston, of Philadelphia, for *thirty thousand dollars*.

The conveyance was made by a transfer of shares in the corporate

stock, in all one hundred and forty shares, of which one hundred and thirty-six came from the Messrs. Ralston and the executors of the late Mr. Ralston, and the remaining four shares from Messrs. Curtis & Leavens, who were the officers of the corporation, and held them in that capacity.

Very respectfully,

Your obedient servant,

SAMUEL NICOLSON.

May 12, 1848.

This, I believe, is the sum of my errors on this head; and it is only another specimen of Mr. Lowell's fairness of statement, to charge me with saying, "over and over again, that Mr. Boott's investment there was sunk," and that "a release from his endorsements of \$30,000, was the only advantage ever realized by Mr. Wright Boott from the \$70,000 invested by him in the Mill Dam speculation,"—[L. p. 108.] without showing the connexion, in which these expressions were used.

I had just stated the fact of the assignment of the reversionary interests, as part of the final arrangement, when I said, in that immediate connexion, that "a release *so obtained* from his endorsement of Lyman & Ralston's note for \$30,000, was the only advantage ever realized," &c. These material words, "*so obtained*,"—that is, obtained by a settlement, just above described, in which description the assignment of the reversions was distinctly included,—are wholly omitted by Mr. Lowell, in his quotation of my language, and nothing is put in to supply the effect of their omission. Instead of informing the reader, that the words, he quotes, were expressly qualified by a reference to that fact, he informs him of exactly the reverse, by quoting the words without the qualification, declaring that there is not "a shadow of truth" in these words, [L. p. 108.] and immediately adding, that Mr. Boott *received these reversions* by the settlement, as if I had said nothing about them. And although it is true, that, after having once described the settlement with that material feature, and after having qualified my first statement of Mr. Boott's loss by express reference to it, I did not always repeat the qualification, when, in

other parts of the pamphlet, I spoke, in general terms, of the loss as total, yet, the whole discussion of the question, whether his investment was *sunk* or not, was in reference to the existing integrity of the trust fund, and not in reference to the amount of Mr. Boott's reversionary interest in it, which would add nothing to the fund, was totally immaterial to the main question, and from which he never, in fact, *realized* any thing to the day of his death.

Yet, Mr. Lowell refers to these general expressions of mine,—divested of that context,—declares them to be false, and states, in proof of their falsehood,—as if it were a new fact coming from him,—not only the payment of the \$7624, (which I admit was overlooked by me, if I ever knew it,) but also the very same fact, concerning the reversions, which I had myself stated, without giving me credit for it in any form. Is that fair argument? It is, at least, one specimen of Mr. Lowell's book.

To return then to the *relative* degree of reliance to be placed on our respective statements, when dependant on mere memory,—the instances, thus shown up, of my forgetfulness of certain immaterial details in this settlement, are not found to be opposed by any superior accuracy of recollection in Mr. Lowell, writing, as he does, with the original papers before him. With such aids to memory as these, who can doubt, that I should now recall much that has escaped me? I am inclined to believe, that I should recollect some things, which Mr. Lowell, with the light of the papers before him, has not thought proper to tell. At any rate, I think I perceive one erroneous statement of his, concerning this settlement, infinitely more important, to the principal inquiry, than all mine put together. This I shall again advert to in its proper place.

CHAPTER VI.

MY SUPPOSED MISTAKE ABOUT COMPOUND INTEREST. A SERIES OF STRANGE MISTAKES BY MR. LOWELL.

Another case, relied upon to impeach my accuracy, and made to appear somewhat striking, lies in the following statement, illustrating certain peculiarities of Mr. J. Wright Boott's business character, his fitness for a trustee, and his management as executor. It relates to the settlement of certain of his accounts, as guardian to persons out of the immediate family.

"Mr. Lowell and myself assisted him in the adjustment of those accounts. How much he required such assistance, and the peculiarity of his ideas in such matters, are illustrated by the fact, that he, for a long time, insisted upon making them up with interest compounded, at frequent intervals, although he charged nothing for his services. The compound interest would have made a difference of about \$10,000 in the amount to be paid. And he could hardly be persuaded not to account on that false principle, although it was apparent that the money, he would so appropriate, *belonged to his father's estate*, and not to him. Left to himself, he would have taken the property of his brothers and sisters, for the purpose of *giving* it to his wards, under the idea that it was no more than duty required. We succeeded, however, in rectifying his accounts, in that and some other particulars, and nothing being charged for the services of nearly twenty years, the heirs of Mr. Francis Boott, who knew nothing of the hazard, to which their property had been put, were extremely well satisfied with the settlement." [B. p. 49.]

Mr. Lowell's comment is in the following language:—

"To show what Mr. Brooks's reminiscences are worth after such a lapse of time, I will adduce a single instance. He says (p. 49,) that in February, 1835, Mr. Boott settled his accounts as guardian; that he for a long time insisted upon making up the accounts with interest compounded at frequent intervals, and that the compound interest so to have been allowed 'would have made a difference of \$10,000 in the amount to be paid.'

"Now I happen to have, among the papers received in my capacity as executor to Mr. Boott, an original letter, which I wrote to him on this very subject. It is as follows:

"Boston, October 21, 1834.

"JOHN W. BOOTT, Esq.

"MY DEAR SIR,

"The mode of computing interest, which you have adopted, is one very unreasonably favorable to the minors. If you do not think proper to charge any commission for your services of nearly twenty years, which, considering the present relative situation of the parties, so different from what it was at the opening of the account, and different owing to your good judgment and exertions in their behalf, is an excess of liberality on your part,—if, notwithstanding all these considerations, you persist in not charging them any thing for your services, you surely have done enough, without allowing them an exorbitant rate of interest for the sums, which have lain in your hands. I roughly went over one of the accounts, the other day, on the principle of allowing no interest on income until it became funded by being added to the principal on the following first of January, and found that this would make a difference of about \$800, or, on the three accounts, of \$2500.

"I should like to see you upon this subject whenever you are at leisure.

Yours truly,

J. A. LOWELL."

"Here then it appears that the difference in the modes of computing interest would have been \$2500, instead of \$10,000, to which it has grown when refracted through the prism of Mr. Brooks's memory! If all his statements of sums are to be divided by four, it will make a material difference in the result. Yet nearly the whole of this book, so far as money matters are concerned, rests on Mr. Brooks's memory." [L. p. 81.]

My first remark upon this is, that Mr. Lowell seizes upon the most insignificant part of the whole statement, namely, the *amount* of the difference between simple and compound interest, as if it were the essence of the thing. With reference to the purpose, for which the statement was made, in illustration of Mr. Boott's peculiarities, it is of no manner of importance whether the sum were \$10,000, or more, or less, provided it were a sum worthy of consideration. If it were \$5000, or even \$2500, as Mr. Lowell would have it, it would have answered the purpose of the illustration equally well; and, in that case, I should only have to regret the appearance, on my part, of that spirit of exaggeration, for the sake of striking statements, which characterizes Mr. Lowell's "Reply," and which, I trust, I am not generally chargeable with. I certainly did not intend so to write, and am not conscious of it, in a single instance.

Fairly viewed, Mr. Lowell's cotemporaneous letter, even if I was wrong as to the sum, instead of being a successful impeachment of the general accuracy of my memory, applied to an old transaction, (which is the point, for which it is cited,) is, in fact, a striking confirmation of it, in all that was essential. It proves, just as I had stated, that, when Mr. Boott made up his guardianship accounts, they required to be reformed in the matter of interest ;—that he had adopted the false principle of allowing compound interest, from “an excess of liberality,” while he charged nothing for his services of nearly twenty years ;—that Mr. Lowell was consulted about it, and, of course, I was, or I should not have known the facts ;—and that we objected to his mode of stating the interest, as “unreasonably favourable to the minors.” The accounts, as finally settled, show that we succeeded, at last, in inducing him to charge simple interest only. These are the material facts, stated by me from mere memory, and now *proved by Mr. Lowell's letter, connected with the accounts.*

My next remark is, that the only proof given, that my estimate of the *sum* was erroneous, is this same letter from Mr. Lowell ; in which he stated to Mr. Boott, that, by going over one of the accounts “roughly,” on a certain principle of computing interest, which he describes, he found it would make a difference, in Mr. Boott's favour, on that account, “of about \$800, or on the three accounts of \$2500.” On the other hand, I stated the effect of compounding, on *all* the accounts, at a round sum, of “about \$10,000.” This, then, is only another case of Lowell *versus* Brooks. But that is quite enough for Mr. Lowell, who appears to enjoy an enviable consciousness of being always in the right,—especially in a matter of accounts,—of which he considers me wholly incompetent to judge.

Mr. Lowell must excuse me, considering my feebleness in that particular, if I am unable to feel the full confidence, that he feels, even in *his* statements on such subjects. I prefer to look for myself, with such poor ability as I have. And this leads me to my third remark, namely, that, if Mr. Lowell meant to say in that letter, as he now thinks he did, that

the difference between simple and compound interest, on all the accounts then in question, was only \$2500, instead of \$10,000, he was, incredible as he may think it, very much out of his reckoning.

I have obtained from the Probate Office a copy of one of these accounts, (the same which Mr. Lowell selects [L. p. 98.] as an example of Mr. Boott's successful administration of a trust fund,) and, on examining it, I find that the difference between simple and compound interest, on the items it contains, is several thousand dollars, instead of about eight hundred dollars, as Mr. Lowell supposes it to have been. I do not know that this is the identical account, which Mr. Lowell "roughly" went over, in 1834; but his letter shows, that the several accounts, then in his possession, were so nearly alike, that he assumes the difference he speaks of to be about the same in each. And if so, I say, the difference *in each*, of compounding or not compounding interest, with annual rests, amounts to *several thousand* dollars, instead of *several hundred* dollars, as Mr. Lowell says.

To set this matter at rest, since Mr. Lowell thinks my statements cannot be relied on, I placed the account, for examination, in the hands of a gentleman, whose professional skill in such matters will hardly be disputed. I now refer to the result, as stated by him; and that will save the necessity of printing the account, and the computations.

LETTER FROM MR. JOHN S. TYLER.

Boston, August 31, 1848.

EDWARD BROOKS, Esq.

SIR:—I have carefully examined the copy you sent me, from the records of the Probate Office, of the account of "John W. Boott, surviving guardian of Francis Boott," dated January 1st, 1835, and passed January 12, 1835.

It begins with a debit of \$12,500, received in cash, September 30th, 1816, from the administrator on the estate of Mr. Francis Boott, the father of the ward, and embraces transactions extending through the entire period from that date to the date of the account,—i. e. a period of about eighteen years and three months.

The credit side consists (after a small allowance for probate fees) of yearly disbursements for the expenses of the ward, entered, uniformly, under the date of September 30, in each year, and of a sum of \$8849 59, paid over in cash, "to order of said ward," at the settle-

ment of the account, and of sundry enumerated stocks, credited, "at cost," as transferred at the same time, amounting, in the aggregate, to \$18,760 16.

The debit side, after the entry of the above mentioned sum of \$12,500, September 30, 1816, is composed of the several items of interest and dividends received, from time to time, on the investments, and of a profit on certain stocks sold, and of one item for a premium on the sale of a right of subscription, and of the following concluding item:—

"1835, January 1. With interest on sundry moneys in his hands, per interest account settled with his ward since her coming of age, \$7012 88."

The whole capital, originally received, appears to have been invested, soon after, in United States 6 per cent. stocks—and these stocks appear to have been re-sold, in 1818 and 1821—producing, in the latter year, upwards of \$11,000 in cash, which does not appear to have been greatly reduced by new investments, or other expenditures of money, until the two or three last years embraced in the account. The annual receipts from income usually exceeded the annual payments for expenses of the ward, and for investments made; so that considerable cash balances appear to have been in the guardian's hands from year to year, and a large balance, in the whole, for quite a long period. These uninvested sums are the foundation of the debit above mentioned of \$7012 88, for interest of moneys.

The inquiries you put to me are,—

"1st. Was this sum intended to represent simple interest at six per cent., or compound interest?"

"2d. If the former, what is the difference in amount between that and the interest compounded annually?"

Since the \$7012 88 appears to have been the balance of an "interest account settled with his ward," which is not annexed, nor the date of the settlement given, I have not the means of determining either the *exact date* up to which interest was, in fact, computed, or the *precise steps*, by which this sum was arrived at. The method I have adopted, therefore, to answer your questions, is to reconstruct the interest account from the data which the probate account furnishes, up to the dates mentioned below.

[Here follow remarks, which would not be very intelligible to the reader without the account, and which I therefore omit.]

The only facts, not deduced directly from the account itself, which I assume for the purposes of the computation, are,—

1. That the time of settlement with the ward, at which interest ceased to run, did not exceed one year before the date of the probate account, presuming that the guardian would not omit to charge himself with interest for a longer period than that.

2. That the rate of interest, whether simple or compounded, is six per cent. per annum.

3. That the original capital of \$12,500 was invested so soon after its receipt, that no interest need be charged upon that, but only upon the receipts and payments of subsequent years.

4. That no interest runs, except from the end of each year, and upon the balance accruing from the cash transactions of the year added to the principal sum on hand at its commencement.

5. That the years begin and end on the 30th of September.

6. I have also assumed, on your information, that the two shares of stock in the Boston Manufacturing Company, bought in 1820, were bought at the original subscription price for the new stock then issued, viz. \$1150 a share.

[Here follow further remarks, which I omit, for the reason above stated.]

The proof that all the assumptions I speak of, taken together, do not vary essentially from the facts, is this. The final balance of simple interest brought out by the computation, at the end of eighteen years, differs from the balance of interest stated in the probate account, by only \$130 11, though the whole amount of interest is upwards of \$7,000.

With these explanations, I answer your questions as follows:—

1. The sum of \$7,012 88, in the probate account, must have been intended to represent simple interest only. That is to say, the result of my own computations, on the assumptions above mentioned, approaches that sum so nearly at *simple* interest, and differs from it so widely at *compound* interest, as to indicate that it was probably intended for the balance of simple interest, at six per cent. per annum, on all moneys paid and received by the guardian, up to the date of the account, or to some date not far from it, and to make it CERTAIN that it does *not* represent *compound* interest up to that date, nor any date within several years of it.

2. Interest at six per cent. per annum, computed from the same data and compounded annually, would have amounted, at the last complete year within the period of the account, viz. September 30, 1834, to \$10,879 38. Consequently, the difference between compound interest and the sum charged for interest in the account, viz. \$7,012 88, is found, at that date, to be \$3,866 50.

This goes upon the presumption, that the guardian may have prepared himself to pay over the balance at the end of the year, although the probate account was not, in fact, settled until several months after; and, therefore, that he is not to be charged with interest after September 30, 1834.

But, if the compound interest should be computed up to the date, at which the entry of interest is made in the probate account, viz. January 1, 1835, the amount of the difference between compound interest at that date, and the sum charged for interest in the account, would be \$4,057 33.

This, strictly, answers your questions. But I have already stated that simple interest at six per cent. per annum., computed from the data of the account and on the assumptions stated, differs, by one hundred and thirty dollars eleven cents, from the sum charged for interest in the probate account. This may arise, either from some error of computation, or from the dates, within the years, from which Mr. Boott considered interest to run, or from some other elementary difference, which cannot be positively ascertained, without seeing the inter-

est account stated by him, or knowing the steps, by which he arrived at the sum of \$7,012 88.

But any difference, except that arising from gross errors, must be within certain limits; and in reference to those limits I would further state, that the true difference between simple and compound interest, computed from the data of the account, at the rate of six per cent. per annum., amounts, at the date of the account, if my computations are correct, to \$3,927 22. Computed to September 30, 1834, it amounts to \$3,736 39.

If the date of the settlement of interest with the ward were somewhat earlier than this, the amount of the difference would be somewhat less. But, the uninvested cash balance constantly on hand, after 1821, with no very great diminution till 1832—3, as shown by the probate account, was so large, and for such a length of time, that the difference between simple interest and interest compounded annually, upon that balance, up to any date, within the last year of the account, which may be assumed as the actual date of the settlement of the interest account with the ward, cannot have amounted to a sum very much less than is above stated.

Variations in the days of the year, from which interest may have begun to run on the payments and receipts of each year, and all the other elementary differences, which the probate account leaves a latitude for, between my assumptions and the data, upon which the sum of \$7,012 88 may have been arrived at, (gross errors only excepted) cannot reduce the amount of difference between simple and compound interest, to a sum less than somewhere between \$3,000 and \$4,000.

I enclose my computations, which have been made with great care, and I believe without errors.

And am, Sir, your humble servant,

JOHN S. TYLER.

The difference, then, between the simple and the compound interest, on this single account, is, at least, \$3,736 39; and Mr. Lowell has the misfortune to say it is only \$800!

He speaks, in his letter, of *three* such accounts, which I suppose were then in his hands. But there were, in truth, *four* of them in all, not very unlike each other on the point in question. It will be seen, therefore, that instead of making an egregious blunder, or even exaggerating the fact, when I said "the compound interest would have made a difference of about ten thousand dollars in the amount to be paid," I kept myself far within the limits of the truth;* and

* By a letter from Mr. Tyler of later date, which the reader will come to in its place, he will find the difference, on *all* the accounts, was more than \$12,000.

since I spoke from mere memory, without a scrap of paper to look at, I am quite content that this instance should be taken, "to show what Mr. Brooks's reminiscences are worth after such a lapse of time,"—Mr. Lowell's letter to the contrary notwithstanding.

But I will not do Mr. Lowell the injustice to leave my readers under the impression, that, when he was deliberately examining Mr. Boott's accounts, in 1834, with a view to advise him how to compute interest, he really made so gross a miscalculation as to set down at eight hundred dollars, a difference, which was, in truth, little, if at all, short of four thousand dollars. The mistake is not in his letter, but in his book. Strange as it may seem, *he does not understand his own letter*; and, even with the letter before him, has neither "reminiscence," nor perception, of the point he was then advising upon.

This letter did not intend to state the difference between simple and compound interest. It states the difference between *two different modes of compounding*; namely, 1. putting each item of cash received on interest, from the *day* it was received to the end of that year, and then adding the item, with this increment of interest, to the principal sum on hand at the beginning of the year, and making the aggregate a new capital, to draw interest for the next year;—2. computing no interest on such items of receipt *within the year*, in which they are received, but adding the simple items themselves, without any increment for interest, to the principal, at the end of the year, and taking *that* sum for the new capital.

Both are methods of compounding, but one causes accumulation considerably faster than the other; and the difference, on this account, is very likely to have been about eight hundred dollars, as Mr. Lowell's letter stated it to be. This cannot now be ascertained, from the account itself, as recorded in the Probate Office, since the dates of *days* are not given in it, though the receipts of each *year* are distinguished. But careful attention to the language of the letter will show, very plainly, that the difference above stated is that, to

which Mr. Lowell referred when he said, "I roughly went over the accounts, the other day, on the principle of allowing *no* interest on income until it became *funded*, by being *added to the principal* on the *following* first of January, and found *this* would make a difference of about \$800."

The truth is, that Mr. Boott, at first, made up his accounts on the ultra principles of not allowing moneys to rest in his hands *a day* without drawing interest; and of *compounding* the interest annually. In that form they went to Mr. Lowell, and the first correction suggested was that, which his letter explains, namely, striking out all interest, between the annual rests, on sums received in the intervals. But that was not the end of it. If it were, the account would now stand with interest, compounded from year to year, according to that principle; whereas, the sums charged for interest are *simple* interest alone. It was a long time before the accounts were brought into the shape, in which they were finally settled. Dates show that. Mr. Lowell's letter was written in October, 1834; the accounts are made up to January 1, 1835, with interest to that day. In the mean time, I was brought in to the consultation, and set my face against the principle of allowing *compound* interest at all, when no commission was charged for services, and when it was apparent that the money must come, not out of Mr. Boott's own pocket, but out of other trust funds in his hands. Mr. Lowell concurred with me; and we, finally, though not without great difficulty, brought Mr. Boott over to the adoption of our views.

After the lapse of more than a dozen years, Mr. Lowell, though his memory may not be "signally treacherous," had totally forgotten these particulars. But he finds, among Mr. Boott's papers, fortunately, as he thinks, an old letter, from himself, on the subject of these guardianship accounts. The letter objects to Mr. Boott's mode of computing interest as "very unreasonably favourable to the minors." It urges, that the omission of all charge, for services of nearly twenty years, is liberality enough, without allowing "an exorbitant rate of interest" besides. It goes on to show that another mode

of computing interest would make a difference, on each account, of about eight hundred dollars in Mr. Boott's favour. Misled by these general resemblances to the case stated by me, resemblance in everything, apparently, except the *sum* spoken of, Mr. Lowell jumped, as he sometimes does, to a conclusion, and took it for granted that he and I were speaking of the same thing throughout, that his difference was my difference, and that my memory had multiplied the figures by four. In his eagerness to destroy my credibility in such matters, by convicting me of mistakes at every turn, he recklessly charges this as one, without taking the pains to examine, carefully, the account, which was before him, or to go over it ever so "roughly," for the purpose of seeing what the compound interest would amount to, or even to consider the language of his own letter with sufficient attention to understand its true meaning.

Yet what a confidence is there in his present statement ! "Here, then," says he,—after quoting *his own* letter as the *highest* authority,—"*Here, then, it appears*, that the difference in the modes of computing interest would have been \$2500, instead of \$10,000, to which it has grown when refracted through the prism of Mr. Brooks's memory!" How complacently are we made aware, that, "if all his [Brooks's] sums are to be divided by four, it will make a material difference in the result" ! And with what a boldness of hyperbole does he amplify the effect of my supposed mistake, by adding, "*yet nearly the whole book; so far as money matters are concerned, rests on Mr. Brooks's memory*" ! And, after all, there are no mistakes, miscalculations, nor mis-recollections in the matter, but his own !

The reader will find the same confidence, complacency, and hyperbole abundantly sprinkled over Mr. Lowell's pages. He must every where look out for them, and make due allowances ; though, perhaps, after this single exposition, (others quite as remarkable, and far less excusable, will follow,) he may think it would have been as well for Mr. Lowell to have said less about my "usual accuracy," and the value of my "reminiscences."

CHAPTER VII.

MR. LOWELL'S MODE OF TREATING WITNESSES. MR. WILLIAM BOOTT. MRS. MARY LYMAN. BOTH UNJUSTLY ATTACKED.

I have now answered the three principal counts of the indictment against me for gross inaccuracy and feebleness of memory. Many other errors are charged, with equal boldness, in support of it; but I have picked out the most prominent, and have given a fair sample, in the varieties above selected, of what they all come to. For the rest, when they are important enough to be noticed, I shall notice them in connexion with the topics, to which they relate.

The same sort of impeachment of credibility, on various grounds, is extended by Mr. Lowell to almost every person referred to by me as authority for particular statements. Some are treated as accomplices in my crime of self-vindication;—and, for one reason or another, scarcely one of them, according to him, is to be believed. Now it is no part of my business to defend other persons against Mr. Lowell's attack, except so far as I may have been the means of subjecting them to it, or so far as their testimony may be material for my use. But, in respect to both Mr. William Boott and Mrs. Mary Lyman, I have, on one or other of these grounds, a word or two to say.

Mr. Lowell affects to consider Mr. William Boott as much a party to my former pamphlet, "as if his name had been emblazoned [meaning, probably, printed] with that of Mr. Edward Brooks, on its title page." [L. Preface.] This is his excuse, (he says it "requires no *apology*," although he evidently feels that it does,) for publishing portions of that gentleman's most private and confidential communications with a brother in London, and letters, or parts of letters, to other persons, for the

purpose,—not openly avowed, but scarcely concealed,—of impeaching his veracity, and of otherwise harming his reputation, in matters very remotely connected with the subjects in controversy.

How far he has succeeded, by these means, in contradicting any thing, which that gentleman has said, and how far he has dealt fairly with the statements he pretends to oppose to each other, we shall see when we come to that part of the case.

But I feel bound, in justice, to contradict, at the outset, the assumption, on which Mr. Lowell proceeds, that Mr. William Boott is responsible for any thing contained in my former pamphlet, except what is expressly stated there as standing on his authority. The “Reply” treats him as responsible for the whole—the discussion on the subject of accounts, as well as the discussion on the subject of insanity. For example, speaking of the accounts, Mr. Lowell says, in his usual language of exaggeration, (L. p. 37,)—“After passing *months* in their analysis, *aided by Mr. William Boott*, and by two of the ablest lawyers in Boston, he [Brooks] entertains no doubt,” &c. Now so far was Mr. William Boott from *aiding* me, in preparing my statement on the subject of Mr. J. Wright Boott’s accounts, or my statement of any thing connected with his management of the family funds, that he did what he could to dissuade me from touching those topics. He wished me to confine my statement, so far as it raised any issue concerning Mr. J. Wright Boott, strictly, to the evidence of his insanity.

I gave to this subject much consideration ; and regretted, deeply, that I could not see my way to any possibility of avoiding the question of mismanagement. It was, in my judgement, and that of judicious friends, the very turning point of the whole issue between Mr. Lowell and myself—the corner stone, which lay at the foundation of the question, whether the charge against me, of having caused a death by false accusations and willful persecution, was well or ill founded. All that I have since learned has tended to confirm that opinion.

If Mr. J. Wright Boott had, indeed, not mismanaged the family property ; if the account, which Mr. Lowell had prepared for him, did, indeed, exhibit the true results of his management, and omitted nothing, which justly belonged to it, and was settled, with my assent, as being just what it ought to be ; all that part of Mr. Lowell's testimony, which occasioned injury to me, might have been, very nearly, as Mr. Lowell said it was,—testimony, of which I had not “any right to complain.” It would have been impossible for me, as Mr. Lowell now declares it is, to justify my conduct, on that hypothesis, unless by admitting, contrary to the truth, that I had acted, throughout, under a mere mistake, which, if it might be a faint excuse, was no justification.

The question of Mr. J. Wright Boott's insanity was one, which I knew, from its nature, must be difficult of proof, and liable, on that account, to remain doubtful in some minds ; that of his accounts, so far as was necessary to show his unfitness for a trustee, and the propriety of my doing what I did, I knew could be made as clear as the light of the sun, to all, who would attend to them. And although it was a necessity most painful to me, which led into that range of inquiry, I satisfied myself, and hoped to satisfy others, that the difficulty, about his management of the family property, was only a part of that peculiarity of character, which developed itself, at last, in a more striking form ; but which, I believe, governed his actions, from a very early period, in a degree, which rendered him less accountable, morally, than other men, and would excuse, to every charitable mind, all that might, otherwise, have seemed amiss.

But, whether I was right or wrong, in the conclusion to which my judgement brought me, after the fullest deliberation, it was *my* judgement, *not* Mr. William Boott's ; and whatever I have done, or said, in pursuing its dictates, is *my* deed and word, *not his*. It is only a piece of Mr. Lowell's hasty assumption, and carelessness of justice, which,—for the sake of a short triumph, and of a plausible excuse for attacking an important witness, under cover of self defence,—pretends to hold him responsible for that, which he never aided, did not

even approve, and in fact may, more properly, be said to have *opposed*.

Thus much I am bound to declare, in justice to him; and however Mr. William Boott may have aided me, formerly, by simply supplying his own testimony to the point of his brother's insanity, I desire to have it understood that his aid ceased there, and that I take upon myself, exclusively, the whole responsibility of the subject of accounts, and all that relates to pecuniary transactions, or to the duties of a trustee—viewing it as my misfortune, not less than that of the late Mr. J. Wright Boott, that I am absolutely compelled, by his disinterested friend, Mr. Lowell, to treat of them.

Mr. Lowell's mode of dealing with Mrs. Lyman,—a lady, peculiarly circumstanced, alone and unprotected,—is less excusable than his attack on Mr. William Boott.

It will be remembered, by those, who have read my former pamphlet, and I now inform those, who have not, that this lady was no party, originally, to the controversy about Mr. J. Wright Boott's accounts, or the refusal to sign a deed; nor, in any way, to the effort, which led to his removal from the trust, by a voluntary resignation in pursuance of a compromise. She had, long before, conveyed to him all her right and title to the family property. Consequently, she neither had herself, nor represented, any personal interest whatever in those proceedings. The part she took in them, so far as she took any, was merely as a matter of feeling, and was entirely on his side.

Mr. Lowell knew all this. Indeed he had, before him, my extract from a letter of Dr. Boott, written when the question of signing the deed was just beginning to be agitated, in which he desires Mr. William Boott, in advising his mother, to “speak of J. W. B. as tenderly as possible;”—and adds, “Mary's letter [Mrs. Lyman's] is *full of generous appeals in his behalf.*” [B. App. p. 36.] Not only was this extract before him, but it would seem, from Dr. Boott's statement, as cited by Mr. Lowell, [L. p. 128], that the letter itself, from Mrs. Lyman, must have been, (unless destroyed,—which is not suggested and not likely,) in Mr. Lowell's own possession.

He uses others of her letters, written in the privacy of family confidence, which he thinks he can use to discredit her; (I shall consider them in their place;) but he makes no allusion to this letter of generous appeal in her brother's behalf.

She had been much ill used by that brother. She did not, in his life-time, attribute it to insanity. Having had scarcely any intercourse with him for years, she did not believe him insane, at the time of her testimony at the coroner's inquest. Reflection, afterwards, and the opinions of others, coupled with the strange things she had herself seen and known of him, and especially with Mr. Lowell's account of the incoherent, extravagant, and unfounded statements of his last letter, convinced her, finally, of the fact. Under legal advice, she appealed, it is true, from the probate of his will, on the ground of his insanity, and proposed to contest it, as she had a right to do, in the higher court. So far, she became actively opposed to Mr. Lowell, the executor of that will. Did she deserve to be subjected to any courtesy for that? If she did, she had, long since, voluntarily abandoned that suit, and abandoned it against her pecuniary interest, upon the same impulse of feeling towards her deceased brother, which had sometimes led her, in his life-time, into "generous appeals in his behalf." From that time to this, she has kept aloof from the controversy.

She was no party to my pamphlet, directly or indirectly. Mr. Lowell, himself, does not suppose her to have been. He says, "she has, with great propriety, declined any participation in this posthumous attack." [L. p. 141.] Yet how does he treat her? He procures and publishes a statement, from Dr. Jackson, of her demeanour and language, (as witnessed by that gentleman, on the occasion of his being called to see the body of Mr. Boott,) during the first paroxysms of a sister's agony of grief, at the shocking sight of a brother killed by his own hand. He embodies that in an argument, designed to show, that this brother was the victim of a conspiracy, to which she was a party. Particular expressions, uttered by her in this state of violent emotion, are published, without a word of explanation, as if they were the confessions of a criminal, to contradict

her calmer and more deliberate statements. He cites portions of her confidential letters, without her permission, and without citing other portions, which might have given them a different complexion, with the view of convicting her of falsehood in her statements at other times. He undertakes to array against her, Miss Sarah Wells, and Mrs. Wells, and even Mr. Wells, for the same object ; although he does not publish one word of statement from either of them. It all rests on his own statement. He repeats Mr. J. Wright Boott's insane idea, and undertakes to maintain and prove its reality, that she was *my spy* over the conduct and actions of that unfortunate gentleman, and that she had been placed by me in his house for that purpose. Nay, he states as facts, with the same view of impeaching Mrs. Lyman, matters not known to himself, and of which he cites no proof, nor refers to any authority ; and taking it for granted that she would deny them, he interposes a threat to silence her, when he says, "I hold myself *pledged to prove* the accuracy of this statement, *if* denied by Mrs. Lyman." [L. p. 140.] Again he says, "Nor do I mean to allege, that *Mr. Brooks* ever knew the *real state of the facts* in relation to Mr. Boott's treatment of Mrs. Lyman. A *misrepresentation* exists somewhere." [L. p. 143.]* Why all these broad insinuations, and all but direct charges, against a lady, who was no party to my pamphlet, and whose former statements, connected with my narrative, had been referred to by me, as I myself declared, without her knowledge or concurrence ? [B. p. 156.] Is this courteous ? Is it manly ? Is it fair ?

But, at the same time that he thus seeks to discredit this lady, he undertakes to make her a witness against me. He says, "I must, however, do that lady the justice to say, that I am authorized to contradict nearly every thing, stated as on her authority, in Mr. Brooks's pamphlet." [L. p. 140.] Nearly every thing ! I do not know what that lady may have authorized Mr. Lowell to say, in her behalf ; but I have reason to

* To prevent any possible mistake, I give notice that the *Italics*, above, are not Mr. Lowell's. In these pages, they may, generally, be understood to be my own, unless I state otherwise.

believe that her authority to contradict any statement of mine, was confined to two or three matters very unimportant, when coupled with the qualifying additions, which accompany the correction. My reason is, that I received a letter from the lady herself soon after the appearance of my pamphlet, by which it appeared, that, upon some sudden impulse of feeling, she had taken offence, I thought without just foundation, at some things in it ; and by which it also appeared, that she considered me to have misstated her in the particulars above referred to, which she wished me immediately to correct. Finding it not done so *immediately* as she desired, she, unfortunately, thought proper to address Mr. Lowell, or his counsel, on the subject ; and we see how she is rewarded for that. The errors she stated to him were, no doubt, the same she had stated to me. A correction of these errors I intended to make, agreeably to her request, as soon as a fair opportunity offered. I understood Mr. Lowell was about to give me the opportunity. He has done so ; and I shall make the corrections when I speak of those subjects. But, when Mr. Lowell says he is “authorized to contradict *nearly every thing* stated as on her authority,” in my pamphlet, this, I imagine, is only his mode of stating an authority to correct two or three small matters.

In respect to them, they were my reports of former conversations, not had with reference to this, or any other, particular use of them ; and I did not consult her about them, while preparing my pamphlet, because I did not wish to implicate her in any such movement. It is very possible, therefore, that I may have misunderstood what I supposed I had heard from her. At any rate, I accept her amendments, which will not be found essential to the main matters in dispute. And, although I have no authority to say one word for that lady, and indeed she has expressed her desire that her name might not even be mentioned, (which is obviously impossible in the present state of the controversy, and after what has passed,) yet, without undertaking to answer Mr. Lowell’s attack upon her so particularly as I otherwise might, I feel bound, at least, since I have been the means of bringing it upon her, to enter

my protest against such an unprovoked assault, by a man, and a man of strength in this community, against a woman—a lady of refinement, who never was a party to this controversy, and who has absolutely refused, and still refuses, to enter into any farther contest on these subjects, even for self-defence.

Henceforth, at least, let there be no misunderstanding of the fact. I only am responsible for what I print; and my complaint is of Mr. Lowell alone. The debate lies between him and me, exclusively; and he cannot be allowed to divert attention from the question of his own conduct and of my conduct, by attempts to implicate others, for the sake of throwing discredit upon any statement derived from them, or by unfounded suggestions that he is, himself, made a mere cover to excuse a premeditated attack upon the dead.

CHAPTER VIII.

SYNOPSIS OF MR. LOWELL'S ARGUMENT. OUR CORRESPONDENCE.

It is time to turn to the more important and direct issues.

Mr. Lowell, in his "Reply," instead of confining himself to a mere line of defence, by showing, if he could, that the rumours, which had grown up to my disadvantage and injury, did not originate in, or were not spread and sustained by, his declared opinions and statements, now takes bolder ground. He assumes, substantially, to justify the rumours themselves, as well founded. This he does by the following train of argument:—

His premises are,

1. That the late Mr. J. Wright Boott was, in substance, "a remarkably good manager of trust property;" [L. p. 97.] that as executor and trustee, he conducted the business of his father's estate, in the main, excellently well, and caused no

loss of it, either to immediate heirs, annuitants, or reversioners ; that the account of his executorship, as prepared by Mr. Lowell for settlement in the Probate Court, was full, accurate, and unexceptionable ; and, consequently, that any charges of mine, to the contrary of all this, must have been founded in error, if not in willfulness and spite.

2. That Mr. J. Wright Boott was no more insane, at any period of his life, or in respect to any subject, than Mr. Lowell himself ; and, as is intimated under a disclaimer, not near so much so as I am.

3. That he was most unjustly persecuted, and cruelly ill-treated, by myself and wife, Mrs. Mary Lyman, and Mr. Wm. Boott, (and I think Mr. Robert C. Hooper is intended to be included,) as parties really leagued against him, to effect his ruin. This, indeed, is not, usually, averred by Mr. Lowell in open and direct terms, though, in one place, direct averment is barely couched under an interrogative form ; [L. p. 146.] but it is, at any rate, a point fully argued, with all the ability and semblance of proof, that he can bring to bear upon it, as part of his reasoning on the question of Mr. J. Wright Boott's insanity, and under the guise of showing, that there were reasonable grounds for him, as a sane man, to believe in that conspiracy.

4. That, being as perfectly sane as any man in the community, he, nevertheless, under such circumstances, killed himself.

The inevitable conclusion,—not stated by Mr. Lowell, in his “Reply,” but left for others to draw,—is, in conformity with the previous rumours, and in conformity with the belief infused into the minds of the jurors, that he was driven to suicide by the unmerited persecution of this knot of conspirators.

Such is the argument, now written, printed, and most extensively published, which Mr. Lowell gives me the opportunity, and in effect challenges me, to answer.

He has taken much pains to declare and insist, over and over again, that, in the late Mr. Boott's life-time, he was no party to the then existing controversy, concerning the state of mind and conduct of that gentleman ; that he knew nothing of its merits, refused to hear either side upon them, kept

himself perfectly impartial and aloof, espoused no cause, and had no personal interest in the disputed questions ; and that, when he came to be a witness before the coroner's jury, he stated nothing, but what his duty imperatively compelled, and nothing, which I, under the circumstances, had a right to complain of, or must not myself have stated, had I been a witness. [Letter from Mr. Lowell, B. p. 17.]

Now I never charged Mr. Lowell, formerly, although he answers as if I had, with having any interest of property in these matters, other than that of being a lender, in his capacity of trustee for others, of large sums of money to Mr. J. Wright Boott, under peculiar circumstances, implicating the estate of his father ; but in a manner nowise dishonourable, so far as I knew, to Mr. Lowell. Besides being such a lender of trust funds, he had been a former partner of Mr. J. Wright Boott, and there had been much confidence, and at different periods of his life, considerable pecuniary dealings between them. So much I stated ; so much Mr. Lowell admits ; and all I charged upon him, in this respect, was, that these circumstances, and his own temperament, had made him a mere partisan, in the matters of controversy and discussion in the family relating to the late Mr. Boott, instead of being, as he was commonly reputed to be, an unprejudiced bystander, intimately acquainted with the parties and the facts, whose opinions were, therefore, entitled to the greatest weight.

I never charged upon him, though he answers as if I had, that he deliberately and intentionally testified to that, which he knew to be untrue ; but what I charged was, that he testified, like a zealous witness, under the strong biases and with the strong prejudices above described, disclosing facts, and withholding facts, so as to have produced,—what I did not charge him with intending,—false impressions, deeply injurious to me ; and that he did this without notice to me, and in fact without my knowledge, until eighteen months had elapsed.

A further complaint was, that he had, since, been unwilling to do any thing to correct the false impressions he had occasioned ; and that, holding himself, or pretending to hold him-

self, above all chance of mistake, he would neither enquire, nor, so far as depended upon him, permit an inquiry, whether there was any thing to be corrected ; and that he even refused to give me such information, concerning his testimony, as might lead to a correction of the mistake, if there was one.

That was the substance of my complaint, on this head, against Mr. Lowell, both as a witness, and as a gentleman, afterwards called upon to explain his testimony. There were other points of his conduct complained of ; but not affecting the question of his interest and bias in this case. If any reader has understood a single passage of my former pamphlet otherwise than as now stated, I desire that it may be looked at again, and I think it will be found to contain nothing, in its language, exceeding what I now declare to have been the extent of my complaint, on that point, against Mr. Lowell. I confine my remark to the language of my *former* pamphlet, because I had, at that time, no information of material facts, which have since come to my knowledge. The pages, which follow, written upon a different state of information, must speak for themselves.

But, if any reader of that former pamphlet doubted whether I were well warranted, then, in charging Mr. Lowell with having filled the part of a mere partisan, before he was a witness, and while he was a witness, he cannot doubt it now, if he has been a reader of Mr. Lowell's "Reply." He declares, in our correspondence, that he never testified to any thing, of which I have a right to complain,—that is, according to his notions of my rights and his assumption of the facts in the case. But we see what he says now, deliberately, in print. We see what his ideas and opinions are declared to have been, on the subjects, to which his testimony related. We see, by those declarations, what his testimony on some points must, necessarily, have been, if he alluded to those matters ; and he does not pretend to deny that he did allude to them, although he says he did so in a way that I have no right to complain of. I think otherwise. That was the great general issue between us, involving many particulars, and among them Mr. J. Wright Boott's character and conduct as a trustee.

This question, what Mr. Lowell's testimony was before the jury of inquest, has now become, comparatively, unimportant ; because all the promulgation of opinion, statement of fact, allegation, and insinuation, whatsoever, which he conveyed to the jurors at the coroner's inquest, or to other persons at other times, directly or indirectly, are now swallowed up in one publication, under his own pen and name, speaking for itself, in *unmistakable language*, and from which he has no retreat.

Still, it is quite material, in reference to his and my accuracy, and the credibility of witnesses, and the motives and merits of our respective publications, and the purpose of the correspondence, which led to them, and the whole course of his and my proceedings, to see how the matter now stands, according to my former statement and his reply, upon the question, what his former testimony was.

Did I make an unfounded charge there ? And how are my proofs answered ?

And here, let me remark, the "Reply" begins with misstating the gist,—if I may borrow an expressive term from the lawyers,—of the correspondence between us. Mr. Lowell states, that the allegation in my letters was, (and he prints it in those same emphasizing Italics, which he thinks so intolerable when used by me,) that, at the inquest on the body of Mr. Boott, he had testified, directly, that Mr. Boott "had been driven to the act of suicide by unjust and injurious charges of mismanagement of his father's estate, and that Mr. Brooks was named by me [Mr. Lowell] as one of the authors of these charges." [L. p. 2.]

This, I say, is a mere misstatement of my original complaint ; and I refer, in proof, to the correspondence, printed in my former pamphlet ; [B. pp. 12–25.] especially to my letter of Dec. 15, [B. p. 18.] which contains a summary of all that had preceded it, showing how the substance of my inquiries had been evaded, and pointing, for the *third* time, to that, which I desired most to be informed upon. I did not charge him with having *testified*, in *direct terms*, as he above states. I told him, in my first letter, that *through* his statements, as

I was informed, the jury were *led to believe* what he above states ; and I detailed, in substance, the *particulars*, which I understood he had communicated to the jury, and which had led them to that belief ; namely, that he had investigated Mr. Boott's accounts, and had found that there was no ground whatever for any suspicion of improper management of the business ; and that, instead of Mr. Boott's owing any thing to the estate, a clear balance of \$25,000 was ascertained to be due, from the estate to him, for voluntary and gratuitous advances ; and that, notwithstanding this, some of the heirs refused to sign the deed of the house until the accounts should be settled, and the property placed in other hands ; to which *facts*, it was said, an expression of *opinion* was added, that these unjust and injurious proceedings had led to the suicide ; and I told him, further, that I was informed that he had *used my name in connexion with those statements.*

His answer denied the use of my name "*in connexion with the unhappy dissensions in Mr. Boott's family,*" and denied the expression of "*any opinion as to the merits or demerits of the parties engaged in them,*" but gave me no information as to the *particular allegations of fact*, which I had inquired about, nor as to the expression of *opinion* concerning the *cause of the suicide.*

My second letter called his attention to this, as not meeting the inquiry, and pressed for an answer to the unanswered matters.

His reply, suggesting that he might well have claimed, as a witness, to be exempted from such inquiries, insists, nevertheless, that he had already sufficiently answered them, and gives no further answer, except to deny,—though rather by implication than directly,—the expression of the *opinion* "that any unjust and injurious proceedings towards Mr. Boott led to his death," and to assure me, generally, that he had given no testimony, of which I, in his opinion, "could have a right to complain."

My third letter showed, pointedly, wherein his former answers were insufficient, and that they left me still uninformed,

by him, as to the *facts* he had stated. From that I now make the following extract.

"The whole *substance* of your testimony, as reported to me, in my view of the matter, lies in *what was said concerning YOUR EXAMINATION OF THE ACCOUNTS, and ITS RESULTS AS FOUND BY YOU, AND COMMUNICATED TO THE HEIRS,—connected with what was said concerning the previous complaints of the heirs, their subsequent conduct, and the fatal result, which followed.* My inquiry is, whether that was, substantially, your statement, or whether I have been misinformed about it. If you think I have no right to ask you that, because you were speaking as a witness, I pray you to say so distinctly. Otherwise, I pray you to answer, distinctly, my original inquiry; or, if there was any indistinctness in that, my inquiry as I now put it; whether you did, or did not, make a statement *to that effect*, or *what statement*, substantially, you *did* make on that subject." [B. p. 22.]

The answer to this was a mere refusal, though in respectful terms, to give any further information on the subject; and so all explanation, and hope of explanation through Mr. Lowell, ended.

Does Mr. Lowell then state, or does he *mis-state*, the substance of what my letters alleged his testimony to be?

What I desire to call attention to, particularly, in the correspondence, is, that he shirked, and evaded all information whatever on the subject of his own testimony *about the accounts*, as *proof* that Mr. Boott had been *falsely charged* by me with mismanagement of his father's estate.

CHAPTER IX.

COMPLETENESS OF MY PROOF RESPECTING THE SUBSTANCE OF MR.
LOWELL'S TESTIMONY AT THE INQUEST.

Starting with this erroneous assumption of the tenor of our correspondence, Mr. Lowell proceeds to endeavour to disprove a different charge from that, which was made. It is needless to inquire how effectually he has done this; but it may be proper to see how far he has altered, or modified, the case, as it really stood, upon the evidence I afterwards produced; for, in my pamphlet, I stood upon the *evidence*, and not upon the *mere information* referred to in my letters.

That evidence was the formal declarations, in writing, before a magistrate, of *five, out of six*, of the persons, who composed the coroner's jury. The declarations were taken, after due notice to Mr. Lowell of the time and place appointed for the purpose, with a request that he would attend personally, and bring counsel with him, if he pleased. [B. p. 24.] In respect to the remaining jurymen, my notice was as follows: "I have not spoken to Dr. Putnam, the sixth jurymen, on account of his delicate position as a brother-in-law of yours; but I should be glad to have his statement also, if agreeable to you and himself." It appears not to have been agreeable to Mr. Lowell, either to invite Dr. Putnam, or to attend himself. In fact, it was not agreeable to him, it seems, that any body should attend; for he took some pains, through his counsel and the coroner, to prevent the other jurymen from doing so. [B. p. 25.] All five, however, did attend; and as Mr. Lowell did not, I was compelled to proceed *ex parte*, in taking their testimony. To that testimony I now refer, printed in full in my former pamphlet, [B. pp. 27-31.]; and, for the convenience of the reader, I extract the following summary:—

"Now upon the first point denied by Mr. Lowell — the use of my individual name — two of the five jurymen, Mr. Learnard and Mr. Dyke, positively affirm it. A third, Dr. Palmer, says it is his impression. Mr. Learnard recollects, that 'he particularly mentioned the name of Mr. Edward Brooks, as one of such heirs.' Mr. Dyke says, 'He stated, in particular, the name of Mr. Edward Brooks, as among the heirs who so refused to sign the deed.' All agree that *the heirs* were spoken of — which included me by description, and must have been so understood by every person, who knew my connexion with the family.

"Upon the second point denied by Mr. Lowell, namely, the expression of any opinion upon the merits or demerits of the parties, or that there had been any unjust and injurious proceedings of the heirs towards the deceased, Mr. Andrews says, 'The impression I got, from what Mr. Lowell said, was, that the refusal of the heirs to sign the deed affected his mind, and was probably the remote cause of his death.' Dr. Palmer says, 'From what I heard of the evidence of Mr. Lowell, I should have had a very unfavourable impression of Mr. Edward Brooks, had I not known him before.' 'It was expressed, that Mr. Boott had been unfairly crowded by the heirs, during the time he had been executor.' He 'represented this result as a decided vindication of Mr. Boott against the unfounded charges of the heirs.' 'My impression was, that this crowding by the heirs had affected his mind, and that it had depressed him so it might have led to his death.' Mr. Learnard says, 'He said Mr. Brooks was a violent man.' 'The impression he left on my mind was, that the conduct of the heirs, in thus refusing to sign the deed, might be the cause of Mr. Boott's death.' Mr. Dyke says, 'He stated, that Mr. Boott was a man of such fine feelings and such integrity, that this refusal so operated upon his mind as to cause his death.' Mr. Brown says, 'I merely recollect, in general, that Mr. Lowell attributed the death of Mr. Boott to the unhappy difficulties in the family, especially in relation to the estate.'

"These seem to me sufficient expressions, or indications, of Mr. Lowell's opinion touching the merits and demerits of parties, who may have differed with Mr. Wright Boott, or with each other, upon any controverted matter respecting his conduct.

"Upon the third point, which I regard as the most important, namely, the testimony, which Mr. Lowell declined giving me any information upon, there is no material difference among the witnesses, so far as they undertake to give the particulars. Mr. Andrews says, Mr. Lowell testified, that the heirs 'had refused to sign the deed, on the ground that the estate had been mismanaged,' — but 'that it proved, on an investigation of the executor's accounts, that there was no foundation for supposing that the estate had been mismanaged; that he, Mr. Lowell, assisted Mr. Boott in making up his accounts, by which it appeared, that a clear balance was due from the estate to Mr. Boott, to the sum of \$25,000.' Dr. Palmer, after saying that 'it was expressed, that Mr. Boott had been unfairly crowded by the heirs,' adds, 'he stated that Mr. Boott had a great aversion to figures, and to making out accounts; and that he, Mr. Lowell, made out his

accounts for him; and, on completing his accounts, he discovered that, instead of Mr. Boott being indebted to the estate, the estate was debtor to him, in the sum of \$ 25,000. He, Mr. Lowell, represented this result as a decided vindication of Mr. Boott against the unfounded charges of the heirs, as to the management of his estate. Mr. Learnard says, ‘He said, the heirs summoned Mr. Boott into court to render his accounts; and that he, Mr. Lowell, as a friend of the family, examined into the accounts, and found that there was a balance due from the estate to Mr. Boott of \$ 25,000.’ Mr. Dyke says, he stated that ‘the heirs, among whom was Mr. Edward Brooks, refused to sign the deed of the property, because, as I understood him, he had mismanaged the estate.’ ‘It was stated by him that the accounts were examined, and a balance was found due to Mr. Boott of about \$25,000.’ Mr. Brown, without undertaking to state particulars, says, he recollects in general, ‘that Mr. Lowell attributed the death of Mr. Boott to the unhappy difficulties in the family, especially in relation to the estate.’’ [B. pp. 31–33.]

To this may be added another extract from the testimony of Mr. Andrews, namely,—“It was my impression, from all I heard and saw, that Mr. Lowell was *extremely anxious* to have Mr. Boott made out a *sane man.*” [B. p. 33.]

Now what says Mr. Lowell to all this?

His first remark is, that “the object of Mr. Brooks was not to elicit the truth; otherwise he would have summoned all the persons present at the inquest. ‘These were nine in number, the coroner, six jurymen, Mr. Kirk Boott, and myself. Of these five only were examined before the magistrate.’” [L. p. 3.]

Mr. Lowell, here, affects to consider it objectionable, that *he* was not summoned, and permitted to state what his former testimony was. Can any thing be more ridiculous? Had I not already called upon him by letter, and urged him, again and again, to make that statement? Had he not evaded, as long as it was possible, and finally refused to answer, those inquiries, on which, I told him, I laid the greatest stress? Had I not next invited, and urged him by repeated notices, to present himself, in person, before the magistrate, at the time of the examination, where he might have heard the witnesses, and put such questions as he wished, and might also have made his own declaration, if he pleased?

But he says, that, after consulting his advisers, “the invita-

tion was viewed, by me and by them, simply as an insult, and was met, as it deserved to be, with silent contempt." [L. p. 3.]

Indeed! Fair notice, and an opportunity offered to be present at an inquiry concerning himself, were viewed as an insult! What would he have said, had I proceeded, in such an inquiry without giving him any notice at all? Or what, if I had sent him a formal *summons* to appear as a witness, with the view of *compelling* him to state what he had refused to state voluntarily, and said I had no right even to ask him? [Letter from Mr. Lowell, B. p. 16.] Would not that have been an insult too? Would he not have treated that, also, with "silent contempt?"—knowing, as he did, or if not, learning, as he would, from his counsel, that he was under no *legal* obligation to obey such a summons, and that, in the absence of any suit pending, he could not be *compelled* to testify, especially not to testify against himself.

So, in respect to the sixth jurymen,—is it not amusing to hear Mr. Lowell complain, that I did not summon Dr. Putnam, when he was informed, that I omitted to do so only "on account of his delicate position as a brother-in-law;" and that "I should be glad to have his statement, also, if agreeable to you [Mr. Lowell] and himself"? As a point of courtesy merely, I had studiously avoided calling Dr. Putnam to be a witness *against* Mr. Lowell; but that Mr. Lowell might not be prejudiced thereby, I begged him to *produce that witness himself*. Yet Mr. Lowell complains, that he was *not produced*, and argues from it that my object was "not to elicit the truth"!

It is true, that, in addition to the jurymen, I might have called the coroner, and I might have called Mr. Kirk Boott; and so could Mr. Lowell, if his object had been that the truth should be elicited. But what had either of these persons to do with the taking of the testimony at the inquest? Mr. Kirk Boott, though present, was only a spectator. He took no part in the proceedings. In fact, I doubt if I even knew, at the time I examined the jurors, whether he was present at the whole hearing, or not. The coroner, I of course knew must officially have presided; but I also knew, that it was the

business of the jury, under their oaths, and not of the coroner, to receive and weigh the evidence, and to render a true verdict upon it. They were, therefore, the proper persons, as it seemed to me,—and not the coroner, nor Mr. Kirk Boott,—by whom to prove what the testimony was, upon which they acted.

The real case, therefore, is this : The whole audience, at that inquest, consisted of eight persons only, besides the party, whose testimony is in question. Of those eight, six were sworn to find a verdict upon the evidence. One was a presiding officer, who had no such duty to perform ; and one was a mere bystander. The party himself is called upon, by letter, to state what his own testimony had been, and refuses. He is then invited to be present at an examination of the jurors, and he treats the invitation with “ silent contempt.” Five of the six jurors, having no connexion with either of the parties concerned in the inquiry, are summoned for examination. The sixth, being intimately connected with the party, whose former testimony was in question, is not summoned, for that reason ; but the party is requested to produce him, if he pleases, and he does not. The five, who were summoned, are *all* examined. Yet, we are told, the object of this inquiry could not have been “to elicit the truth,” because the *presiding officer*, and the *mere bystander* and the *sixth* juryman, whom the party did not *choose* to produce, and the *party himself*, who had *refused to disclose* the matter in question, and would not even be *present* at an inquiry about it, were not examined also !

Now, ordinarily, I suppose two or three intelligent, unimpeached, and uncontradicted witnesses, of the same fact, are as good evidence of it as a hundred. If the question be, what had occurred in a crowded court-room, must one summon the whole auditory, instead of two or three such witnesses, selected from those, whose attention was solemnly called to the occurrence, at the time, in the discharge of a sworn duty ? Or, if he does not, is he to be told, that the omission shows that he does not wish to arrive at the truth ? So far from being *faulty* in the *number* of my witnesses, I think most persons will con-

sider, that I went to an extreme, in calling *every juror save one, and inviting the other party to bring that one.*

But, after all, the only important inquiry is, whether the witnesses, who were *not* called, would, or could, have materially contradicted those, who were called, on the main points in question. From their present statements, published by Mr. Lowell, I hold it to be clear that they could not. This we shall see presently.

But, Mr. Lowell supposes I must have had some particular motive, in not calling the coroner; and says it was, that I had "ascertained beforehand" that he would not sustain me. [L. p. 4.] Now I had a better reason than that, besides the reason that he was not sworn, as the jurors were, to attend to the evidence. My additional reason was, that he had stated the same transaction one way at one time, and another way at another time,—and that within three or four days after its occurrence. I refer to his contradictory statements to Mr. Dexter and to Mr. Loring, respecting his knowledge of the contents of the letter produced by Mr. Lowell at the inquest. [B. pp. 151–153.] After that, how was it possible for me to place great reliance on the accuracy of his recollections and statements a year and a half later?

But why did I not call my young friend, Mr. Kirk Boott? asks Mr. Lowell. Certainly, not from any like distrust of him; but, simply, for the reasons, that he had no official connexion with the inquest; that there were witnesses enough without him; and that I did not wish to implicate him, unnecessarily, any more than Dr. Putnam, in a proceeding, which would appear somewhat adverse to Mr. Lowell, whose friendship, in many ways, I believed to be valuable to him. Mr. Lowell, however, thinks he sees a different motive; and says, "I am authorized by Mr. Kirk Boott to say, Mr. Brooks knew, from his own lips, before his book was printed, that he would not have sustained him." [L. p. 4.]

Observe,—Mr. Lowell is careful to say, only that I knew this *before my book was printed*,—not that I knew it *at the time of the examination*. But, even as Mr. Lowell states it, I strongly suspect an over-statement. I cannot think that that

gentleman, (Mr. K. Boott,) meant to authorize the idea, clearly held out by Mr. Lowell, that he would contradict, generally, the statements of the jurors, as printed by me. I shall not believe that, until I learn it from Mr. K. Boott himself.

I had never held any conversation with that gentleman, on this subject, at the time of the examination. Long after, and when my book was in fact partly printed, I had one for the first and only time, not sought by me, but arising, accidentally, upon the occasion of his calling at my office for a different purpose,—a purpose of business, connected with the trust under his father's will, which led me to speak of Mr. Lowell, who was associated with me in that trust.

In the course of the remarks then made, I alluded to the testimony at the inquest, and referred, particularly, to Dr. Palmer's statement, that Mr. Lowell "represented this result," —that is, the result of the accounts,—"as a decided vindication of Mr. Boott, against the unfounded charges of the heirs, as to the management of his estate." [B. p. 28.] I think I read the statement to him, from Dr. Palmer's written declaration. Mr. K. Boott thereupon remarked, either, that he did not *hear* Mr. Lowell say that, or, that he did not *recollect* hearing Mr. Lowell say that; "but," he immediately added, "*there was considerable conversation between Mr. Lowell and the jurors, after the inquest was over, which I did not distinctly overhear; and he might have said it then.*"

This, so far as I recollect, was the whole extent of Mr. K. Boott's contradiction,—if it deserves to be called so,—in that conversation, of any expression, or representation, attributed by either of the jurors to Mr. Lowell. Mr. Lowell, however, says, in the most general terms, that I knew from Mr. K. Boott himself, that he would not have sustained me; as if he would not have confirmed the jurors in *any part* of their testimony! He repeats [L. p. 15.] that "he [Brooks] had been *expressly informed* by Mr. Kirk Boott, that he well remembered, that I [Mr. Lowell] *had not given any such testimony to the jury as Mr. Brooks alleged!*" And he complains

—"Yet the benefit of this statement of Mr. Kirk Boott is no where given to me throughout the book." [L. p. 4.]

Now I, certainly, should not have had the least objection, except from a desire not to implicate Mr. K. Boott, unnecessarily, in this business, to have given Mr. Lowell the full benefit of that gentleman's statement, as it was actually made to me, and as I have now given it above, *if he can find any benefit in it.* It does not strike me as mending Mr. Lowell's case. To me it is quite indifferent, whether, what he said to the jurors was said in the form of testimony, or otherwise. But if, after the inquest was over, he entered, gratuitously, into conversation with the jurors, and thereby enlarged, or qualified, the effect of any thing he had just said as a witness, *so much the worse*, as it seems to me, for Mr. Lowell.

The substance of my complaint is, that, by what he said to those gentlemen, and by his manner of saying it, he conveyed erroneous impressions, injurious to me. I do not say, that he *intended* to do so, but I say such was the fact. If, immediately following his testimony, there was, as now appears from Mr. K. Boott, and will presently appear by another witness, a desultory conversation besides, in which he took part, it would be natural enough for the jury, in giving an account of what Mr. Lowell had said, after the lapse of eighteen months, to blend the conversation with the testimony,—especially when nothing occurred to call their attention to the distinction: and the effect, on them, of a statement from Mr. Lowell, would be the same, whether made under oath or not. But if it were made, in a *mere conversation*, what becomes of Mr. Lowell's excuse, that he could not avoid saying what he did, because he was *under the obligation of a witness?* [Letter from Mr. Lowell, B. p. 17.] That Dr. Palmer and other jurors did, in one way or the other, derive the impression, from what Mr. Lowell said, and from his manner of saying it, that he meant to represent the state of the accounts as "a decided vindication" of the late Mr. Boott, against the charge of mismanagement, made by some of the heirs, can not be doubted, if Dr. Palmer and the other jurors are believed. And Mr. K. Boott said nothing to me, and says

nothing now, in his printed statement, [L. p. 13.] which tends to contradict Dr. Palmer, as to the facts, which he says were stated by Mr. Lowell, nor as to the manner, in which those facts were stated. They produced on Dr. Palmer, and on the other jurors, a particular impression, which may not have been produced on Mr. K. Boott, either because he did not hear what they heard, or because of previous opinions and feelings, which affected him, and did not affect strangers. Mr. Lowell, certainly, *now* represents the accounts as a positive vindication of the late Mr. Boott's management. And since he does not deny, that he spoke of the accounts at the inquest, it may fairly be inferred, that he, in effect, did so represent them on that occasion, even if Dr. Palmer and Mr. K. Boott should happen to disagree in their recollections of particular expressions used; still more, if words were addressed to Dr. Palmer, in conversation, which Mr. K. Boott admits he did not hear. How could Mr. Lowell, if he believes what he now prints, have spoken of the accounts, then, otherwise than as he speaks of them now?

Indeed, it is the more probable, that this representation of the accounts, as vindicating the late Mr. Boott against false charges, may have been made during the colloquy, which followed the inquest, and which Mr. K. Boott said he did not hear, from the fact, that Dr. Palmer's strong impression about it was derived, not merely from the *words* used by Mr. Lowell, but also from his extremely *emphatic manner* of delivering them, *with his right arm raised in the air*,—which would have been very unsuitable for a witness, calmly delivering his testimony upon oath.

This, it is true, does not appear in Dr. Palmer's written declaration before the magistrate; for this witness appeared, as the witnesses did generally, extremely cautious not to make over-strong statements; and this excessive caution, sometimes, led them to soften expressions and descriptions, to a lower point than the truth would have justified. But any body, who is curious enough to inquire of Dr. Palmer, I have no doubt, will find the truth to be as I now state; and that the words actually used by Mr. Lowell, in this emphatic

manner, were "*triumphant vindication.*" So Dr. Palmer has stated to me, and to others. The fact, of the *manner* of making such a statement, will not be incredible to those who are acquainted with Mr. Lowell.

I should add, that I was not acquainted with this fact of a conversation, in addition to the testimony, at the time of the examination of the jurors, and consequently their attention was not called to it. I shall presently prove the fact by another of Mr. Lowell's witnesses.

CHAPTER X.

MR. LOWELL'S CHARGE AGAINST ME OF TAMPERING WITH THE WITNESSES.

Mr. Lowell, next proceeds, to suggest, that I had prepared the witnesses, by previous conversations; or, in other words, had taught them what to say; and that the examination was, in other respects, unfairly conducted. [L. p. 4 *et seq.*] Very flattering this, both to the witnesses and to the magistrate, as well as to me. I take it to be one of those "petty insinuations," with which Mr. Lowell says *my* pamphlet abounds. [L. p. 20.] But let us see upon what this imputation is founded.

The supposed tampering with the witnesses, appears to be a mere inference, by Mr. Lowell, from certain statements, said to have been made by Mr. Coroner Pratt, respecting my conversations, *not* with any one of those witnesses, but *with the coroner himself.* [L. p. 5.] The evidence of these statements, of Mr. Pratt, is said to be a memorandum, made by Mr. Lowell's counsel, Charles G. Loring, Esq. Dec. 19, 1846, of an interview he had just held with Mr. Pratt. This date, it will be observed, is *the day after* my notice to Mr. Lowell,

that I had requested the five jurors to appear before John Phelps Putnam, Esq. on Monday the 21st of Dec., for the purpose of taking their testimony. [B. p. 24.] Though Mr. Lowell treated my notice, otherwise, with "silent contempt," it seems, he did not, after all, so utterly despise it, but that he thought it prudent to have his counsel see the coroner in the mean time ; and the effect of the interview appears to have been, that the coroner called on the several members of the jury, or, at least, on three of them, who spoke of it afterwards, and endeavoured to deter them, severally, from appearing before the magistrate, at the time and place appointed. [B. pp. 25, 26.] This circumstance, to which Mr. Lowell's attention was called, by a letter from me, at the time, and which was particularly stated in my former pamphlet, is not denied by Mr. Lowell to have been a movement proceeding from him.

But, to return to the interview between Mr. Loring and Mr. Pratt. Since the evidence, of what was said by Mr. Pratt, lies in Mr. Loring's memorandum, it would have been more satisfactory, certainly, if the memorandum itself had been printed, that we might know the whole of the conversation, so far as it appears by that paper ; and when question is made, by Mr. Lowell, of the fairness of my proceedings in the taking of testimony, I cannot but remark, that, when Mr. Lowell caused the coroner's statements to be taken down in writing; on two different occasions, (viz. an interview with Mr. Loring, mentioned in his letter to Mr. Dexter of March 12, 1845, [B. App. p. 61.] and this second interview of Dec. 19, 1846,) I should have been far from considering myself *insulted*, if he had given me notice, and an opportunity to be present, either in person, or by my counsel, at those examinations. I had no such notice ; and in respect to this second interview, we have no knowledge of the contents of Mr. Loring's memorandum, except from Mr. Lowell's account of it. Without claiming to quote its exact language, he says,—" From a memorandum made," &c. "it appears that Mr. Brooks had made many applications to him (the coroner) on the subject of the inquest," and, among other things, had inquired, " whether there had not been improper management, in get-

ting Dr. Putnam put upon the jury, and whether Mr. Lowell had not suggested the questions put to the witnesses, and otherwise interfered at the inquest, and that he [Mr. Pratt] had replied, that Mr. Lowell had had nothing to do with it, and would not have been allowed to meddle, if disposed ;”— and “that Mr. Brooks had, repeatedly, asked him about the use of several ‘little words’ by Mr. Lowell at the hearing.” “From this,” says Mr. Lowell, “we may *infer*, how he had dealt with those members of the *jury*, whom he saw before the examination, and afterwards summoned to be present at it.” [L. p. 5.]

Now, if Mr. Lowell really wishes to know, how I had dealt with the members of the jury, or any of them, and what influence I had used to corrupt their testimony, I advise him to apply to those gentlemen themselves for information, instead of making inferences about it, from what the coroner says of my conversations with *him*, held *without reference to the taking of testimony at all*, but simply for my own information on certain points. And here, I would remark, that when the memorandum is referred to by Mr. Lowell, as showing that Mr. Pratt said I had made “*many*” applications to him, and that I had “*repeatedly*” asked him about the use of those “*little words*,” either Mr. Pratt, or the memorandum, or Mr. Lowell, is egregiously mistaken.

I made some inquiries of Mr. Pratt at one time, soon after the inquest, about the course of proceeding, and among other things inquired, how Mr. Lowell’s brother-in-law, Dr. Putnam, happened to be upon the jury ; for that seemed to me a remarkable accident, if it was an accident. Some inquiries were also made, either by me, or for me, about the same time, concerning the contents of the letter, and concerning what was said of it at the inquest ; which, I presume, are the “*little words*” spoken of. Upon another occasion, before the date of Mr. Loring’s memorandum, I exchanged a few words with Mr. Pratt, on another point connected with the proceedings. But I have not the least recollection, or belief, of ever having asked him, upon any occasion, “whether Mr. Lowell had not suggested the questions put to the witnesses,” or of re-

ceiving from him any "indignant denial," of which Mr. Lowell complains I have not given him the benefit. If there had been any such denial, and especially *any indignation* in it, I think I should have recollect ed the circumstance, and would, certainly, have given Mr. Lowell the full benefit of that.

The truth is, I never got much information of any kind from the coroner, though it seems to have flowed freely enough in the other direction ; and after the discrepancy in his statements about the letter, above referred to, I had but one conversation with him on any subject, until after Mr. Lowell's publication. But, on the 13th of April, 1848, he happened to call at my office, to see, on some official business, another gentleman, who was then a temporary inmate of my office. Finding me, Mr. Pratt himself introduced this subject, by remarking, that Mr. Lowell had sent him a copy of his pamphlet, and by asking for a copy of mine. I then availed myself of the opportunity, thus proffered, to hold a few minutes conversation with him ; and, as Mr. Lowell had taught me how that business should be done, I requested the other gentleman, who was present, to make a memorandum of what passed, though not without fair notice to Mr. Pratt, by making the request aloud. This memorandum I shall, shortly, print. At present, I have only to remark, that Mr. Pratt confirmed, on that occasion, the statement made by Mr. Kirk Boott, and said, "There was a general conversation after the inquest; *Mr. Lowell talked with the jury.*" But, he added,—and I pray Mr. Lowell to take the benefit of it,—"I did not hear him say any thing *against you.*" Some of the jurors, it seems, thought otherwise ; and as they state what he *did* say, the reader may judge for himself, whether it was, in its natural effect, *against* me, or not. I never supposed it was, in form, a mere *invective*,—which may be Mr. Pratt's idea of speaking against a man. Dr. Palmer says, in his declaration, "From what I heard of the evidence of Mr. Lowell, I should have had a very unfavourable impression of Mr. Edward Brooks, had I not known him before." Indeed, Dr. Palmer told me, that

he never saw me, afterwards, in the street, without thinking on what Mr. Lowell had said of me, and wondering if it could possibly be true.

CHAPTER XI.

HOW DR. PUTNAM CAME TO BE UPON THE JURY. NO ATTACK MADE BY ME ON DR. PUTNAM.

One other extract, from the memorandum, in my possession, of this last mentioned conversation with the coroner, may now be made. It is in the following words,—Mr. Pratt speaking :—“I said I should want one good physician on the jury. *Mr. Lowell said, Dr. Putnam is at the house, and will be a good man.* I knew Dr. P., and mentioned his name to the officer who summoned the jury. This was before Dr. Palmer was summoned.”

The coroner had informed me, on the same subject, soon after the inquest, that he found Dr. Putnam with Mr. Lowell at the house, when he went there, *and that Mr. Lowell asked him to put Dr. Putnam on the jury* ;—to which he answered, that the constable had gone to summon a list ; but that the constable himself was to be one of the jury, as he usually was, and that he (the coroner) could leave off the constable, and put Dr. Putnam on in his place,—and that he did so. Which, of these two accounts, is in exact accordance with the reality, or whether either of them is, is more than I can say. They both agree, however, in the main fact, that Dr. Putnam came to be a member of the jury *through Mr. Lowell's suggestion.*

Of this first conversation, there was no witness but myself ; and, though I relied on my own recollection of it, I did not rely on Mr. Pratt's ; and therefore, when I alluded, in my pam-

phlet, to such information, as received from some quarter, I did not name my authority, lest my statement of it should, possibly, meet with a contradiction from Mr. Pratt. But, being now provided with a memorandum, made by a third party, of a subsequent conversation, heard by him, which, though it describes some of the circumstances differently, substantiates the principal matter, I now refer to what I had formerly heard from the coroner, in order to show, that I had good ground, although I did not then disclose it, for certain comments.

And now, let us see, what Mr. Lowell says about this:—

“ If Mr. Brooks is to be believed, I not only endeavoured to influence the verdict of the jury by my own testimony, and by suggesting questions to be put to the other witnesses, but I also managed to get Dr. Putnam put upon the jury. ‘One,’ says Mr. Brooks, [p. 26.] ‘who had not been originally summoned for the purpose, was at the house, by the invitation, I believe, of Mr. Lowell, and was put upon the jury, by Mr. Lowell’s suggestion to the coroner, as I am informed. This was Dr. Putnam, a brother-in-law of Mr. Lowell.’

“ This paragraph, it was hoped, would answer the double purpose of throwing a suspicion of unfair management upon me, and of discrediting beforehand the testimony of Dr. Putnam. Who Mr. Brooks’s informant was, we are not told; it seems, however, from Mr. Loring’s memorandum of December 19, 1846, above cited, that the coroner had distinctly assured Mr. Brooks that the suspicion was unfounded.” [L. p. 189.]

If it so seems, from Mr. Loring’s memorandum of December 19, 1846, all I have to say about it is, that it seems, from the memorandum made by my friend Mr. Adams, April 13, 1848, that the coroner *then* distinctly assured me *exactly the other way*; and I refer, in proof, to Mr. Adams’s memorandum, in a subsequent part of these remarks.

Mr. Lowell then goes on to state what the fact was.

“ The fact was this: the coroner told me that it would be necessary to have a medical man in attendance, and asked me to procure one. Dr. Jackson expressed a reluctance to attend, and I called upon my family physician, Dr. Putnam. Neither he, nor I, had the slightest expectation that he would be put upon the jury, nor did either of us make any suggestion to that effect.” [L. p. 189.]

Now I shall not be so discourteous to Mr. Lowell as to suggest, that his statement, on this point, is overborne by Mr. Pratt’s. But Mr. Pratt, it now appears, has, on two several

occasions, stated to me, and upon the last of them in the presence of a disinterested auditor, whose certificate I shall give, that Mr. Lowell *did* make the very suggestion, which he says he did not. And since Mr. Lowell chooses, in repeated instances, to rely on Mr. Pratt, as a good witness against me, I think it is but fair that I should "give him the benefit" of what his own witness says about him. It is certainly unfortunate, for Mr. Lowell, that he and his witness cannot agree better than this; but I leave the contradiction to go for what it may be worth.

Mr. Lowell then adds the following remark:—

"I think the impartial reader will hardly fail to ask, what there is in Dr. Charles G. Putnam's character or position, that authorizes Mr. Edward Brooks to hazard the innuendo, that, in the capacity of a juror, he would not appreciate the solemnity of the obligation upon him, or could be swerved from the strict and conscientious performance of his duty." [L. pp. 189, 190.]

I should have been glad if Mr. Lowell had been pleased to point out the particular passage, which he supposes to contain this harsh innuendo. I am not conscious of it. Assuredly, I never intended to intimate any such thing. I never entertained the idea. If any thing, in my pamphlet, is fairly entitled to that construction, I most sincerely ask Dr. Putnam's pardon for it, and am happy in the opportunity of declaring, that I have the most entire confidence in his character as a physician and a gentleman. I am the more solicitous to make this declaration, because I perceive from a letter of Dr. Putnam, printed by Mr. Lowell, [L. p. 14.] that he thinks it necessary to disclaim having made a proposal "to embody in the verdict the fact that Mr. Boott was sane;" which three of the jury said was proposed by some one, and that they did not recollect by whom, while two of them did not recollect the proposal at all;—and "therefore," says Dr. Putnam, "by the process of exclusion, the imputation rests on me." Mr. Lowell represents this as "a matter personal" to Dr. Putnam, [L. p. 14.] and Dr. Putnam, himself, apparently considers it an "imputation."

What I said, on that subject, will be found at p. 157–8 of my former pamphlet. I was commenting upon the evidence,

and was, of course, obliged to take it as I found it. I extracted the statements of the five jurymen relating to this point, and showed from them, that this proposal could not, probably, have come from either of those five persons, nor from the coroner ; and I then added as follows :—

“ There was nobody else, by whom it *could* have been proposed, except Mr. Lowell, or his brother, Dr. Putnam, the sixth juryman. There was one other person present, a son of the late Mr. Kirk Boott, but I understand he took no part in the proceedings.

“ In this connexion, the further statement of Mr. Andrews deserves to be borne in mind.

“ ‘ There was a *question suggested by Mr. Lowell* to three of the witnesses.’ ” [B. p. 158.]

In a fair commentary on what the witnesses had said, knowing nothing of the fact myself, I could not assume to exclude, positively, either Dr. Putnam or Mr. Kirk Boott, any more than Mr. Lowell. Of Mr. Kirk Boott I could say, with truth, as I did, that I understood “ he took no part in the proceedings.” Of Dr. Putnam I could not say that ; and I did not conceive that the *character* of either of the gentlemen had any thing to do with the question. It would have been a mere mistake. But, I submit to the reader, upon the extract above made, and still more upon the context, which preceded and followed it, that the imputation, such as it was, and whether well or ill founded, of leading the jury to a conclusion, and of desiring to have that conclusion appear, affirmatively, in their verdict, was directed, throughout, against Mr. Lowell ; and that Dr. Putnam has mistaken me, if he infers, that, by any process of exclusion or otherwise, any imputation was meant to rest upon him. Mr. Lowell, himself, understood it precisely as I intended he should ; for he says, elsewhere, “ Another instance of a like kind is the attempt to fix upon *me* a proposal that the coroner’s jury should bring in a verdict that Mr. Boott was a sane man.” [L. p. 19.]

I am aware, that Mr. Lowell proceeds to make certain statements, which, if admitted, would tend to narrow the field of exclusion, so far as to make my remarks, on this proposal, properly applicable to Dr. Putnam, rather than to himself. But that is his doing, not mine ; and I am not prepared to admit

the unqualified correctness of what he says on that subject, which is as follows :—

“Upon this proposal, very rightly characterized by Mr. Brooks as an extraordinary one, there are some severe comments. But the learned counsel of Mr. Brooks might have informed him, that no one is permitted to be present at the deliberations of a jury. The proposal, if made, came from one of themselves. Was Mr. Brooks ignorant of this? or, knowing it, was he willing to hazard the innuendo, trusting to the ignorance of his readers?” [L. p. 19.]

This alleged exclusiveness of a jury, at their deliberations, is perfectly true, as every body knows, of a jury, which has tried a cause in court, and is sent out to find a verdict. The rule of the court forbids them to communicate with others in such cases; and the court is capable of enforcing its own rule. But who believes this to be true in cases of inquest, when the jury have no guidance but that of a coroner and a constable, and no court to set aside their verdict? Perhaps, in strict propriety, a coroner’s jury *ought* to hold itself bound by the same principle, and to allow no stranger to be present, except as a witness, and while testifying. But there is no such nicety, I imagine, in the usual practice of such bodies, especially in cases where there is no suspicion of murder. I do not speak, of course, from any personal experience; for I never attended a coroner’s jury in my life. Mr. Lowell’s friendly offices saved me that necessity, on the only occasion when I might, otherwise, have been called to that disagreeable duty. But such is my belief. I wrote under that idea. If I am shown to be mistaken in it, I shall most readily retract all I have said, on the subject of this proposal, as likely to have come from Mr. Lowell.

But, it appears, that, in this very case, *conversation* was held with the jurors relative to the subject of their inquiry; and that Mr. Lowell expressed some of his ideas in that conversation. True, Mr. Pratt says this was “after the inquest;” by which he means, I suppose, after the verdict of “death by suicide” was made up; but whether it was so, or not, is more than I know; and if it was, the verdict was still, I presume, under the control of the jury, and amendable by an addition, on the distinct point of insanity. However this may be, I

desire to have it understood, that I never said, nor intended to intimate, that I thought Dr. Putnam to be the author of this proposal, nor that there was any thing derogatory to his character in it, if he had been ; nor that there was any impropriety in his acting on the jury, at the request of Mr. Lowell. Still less have I ever suggested, or thought, "that, in the capacity of a juror, he would not appreciate the solemnity of the obligation upon him," [L. p. 189] or that he could, knowingly, "be swerved from the strict and conscientious performance of his duty." [L. p. 190.]

Like other men, I suppose him liable to be influenced, in his judgement, by previous impressions, and by the opinions of friends, whose opinions he is accustomed to respect. But even that I do not attribute to him, in relation to this verdict. There was nothing, certainly, in the evidence laid before that jury, except the bare fact of a suicide, which could have justified a verdict of insanity ; and I have no reason to suspect, that Dr. Putnam knew facts, known to Mr. Lowell, which, if proved, might well have induced him to pause for further inquiry, before he consented to omit the finding of the fact of insanity. This idea of an intended attack on Dr. Putnam may be safely dismissed, as another of Mr. Lowell's false issues.

CHAPTER XII.

MR. LOWELL'S CHARGE OF UNFAIRNESS IN THE EXAMINATION OF THE JURORS.

Mr. Lowell, after inferring, from my inquiries of another person for a different purpose, that I must have gradually infused into the minds of five jurors, "by repeated inquiries and insinuations," [L. p. 6.] what I desired them, as witnesses, to say, concludes, that "the result of the examination was such

as might have been expected ;" and is obliged to admit, that they "all agree, that my [Mr. Lowell's] testimony tended, more or less clearly, to the conclusion, that the death of Mr. Boott was attributable to uneasiness of mind, caused by the unhappy difficulties in the family, especially in relation to the estate." [L. p. 6.]

"Even to this conclusion," he adds, "Mr. Brooks's witnesses would hardly have come, if the examination had been conducted with a *decent regard to fairness!*" [L. p. 6.]

This is very plain speaking. It is as much a reflection upon the magistrate, who took that testimony, as it is upon me ; and I may very well ask, after the manner, and nearly in the language, of Mr. Lowell, "what there is in Mr. John P. Putnam's character or position, that authorizes *Mr. John A. Lowell* to hazard the innuendo, that, in the capacity of a *magistrate*, he would not appreciate the solemnity of the obligation upon him, or would be swerved from the strict and conscientious performance of his duty ?" [L. p. 189.]

He was, at that time, an entire stranger to me. I never spoke to him in my life, nor knew him even by sight, until I called upon him to fix a time for the hearing, after he had been spoken to, by my counsel, to engage his services as a magistrate. But he was recommended, by one of my counsel, as a gentleman of known respectability in his profession, accustomed to the taking of depositions with exact fidelity, and usually employed by him, for that duty, in important cases. He was, in fact, employed by him, and not by me, in this case.

It will be borne in mind, besides, that it was not expected to be an *ex parte* proceeding at all. Three days' notice had been given to Mr. Lowell, with the choice of appearing with or without counsel, as he pleased. [B. p. 24.] After waiting a reasonable time, no one appearing in his behalf, the examination proceeded without him. Mr. Putnam was scrupulous, in the outset, to inform the witnesses, that he had no power to compel them to testify, and that no oath could be administered. In other respects, the business was conducted in what I understand to be the usual manner of taking depo-

sitions. The witnesses were successively examined, and their respective statements written down as delivered. Each was asked, in the first place, whether he had been on that jury of inquest, and whether Mr. Lowell was a witness before it ; and was then requested, to state what he recollects of Mr. Lowell's testimony on that occasion. When he had told his general story, and came to a pause, particular questions were put, by me, on such further points as I wished to be informed upon, and supposed the witness might know. The magistrate proceeded slowly and carefully, taking much pains to secure the exact language of the witness, reading each sentence over to him as he proceeded, and allowing him to correct it if it were not precisely as he meant to have it ; and such corrections were in fact made, in several instances. Finally, after assuring himself that the witness intended the whole declaration, precisely as it was made, it was submitted to the witness, for his own examination, and subscribed by him.

Now what says Mr. Lowell ? " We are led to infer, that they were all examined together. If so, each had the benefit of having his memory refreshed by the evidence, and by the running commentaries of his associates." [L. p. 6.]

This is one of the cases, in which Mr. Lowell runs into an inference without any premises. It is true, that the witnesses were not kept in separate apartments. This is sometimes done in a capital trial ; but is not done in ordinary cases of examination, in court or out of court. But the witnesses were successively examined ; the statement of one was completed before that of another was begun ; there was no interruption, prompting, or running commentary from any quarter ; and, as it happened, they did not all hear each other's testimony ; for one witness, whose recollections are perhaps fuller, and more distinct, than either of the others, did not come in till the examination of several, if not of all, the others, was concluded. The order, by the way, in which the declarations are printed in my pamphlet, is the order, in which the papers happened to be tied together by the magistrate, and is not the order, in which the examinations oc-

cured, as, it would seem, Mr. Lowell, also, erroneously infers.

"At any rate," says Mr. Lowell, "the questions put to them were of so leading a character, that in an open court, where the rights of the adverse party were duly guarded, no lawyer, having any regard for his professional reputation, would have ventured to put them;" and he thinks, that the learned counsel, who advised me in this business, must have taken especial care, that the fact of their absence should be recorded in my pamphlet. [L. p. 7.]

I am not aware that these gentlemen were desirous of that protection, though it is not unlikely that my questions were very inartificially put; for I profess no skill, or experience, in that matter. I should greatly have preferred, that my counsel should have been present to conduct the examination. In that case, I think it probable, that the testimony might have been put in much better shape, and perhaps more information might have been obtained from the witnesses. But I considered myself, impliedly, engaged to Mr. Lowell, by the tenor of my notice to him, not to avail myself of counsel, if he did not. [B. p. 24.] Had I done so, we should, undoubtedly, have been told, that that was a very unfair proceeding; and that the adroitness of these gentlemen of the law had contrived to extort from the witnesses what they had never intended to say.

As it was, I conducted the examination, so far as it depended on me, as well as I knew how; and, I am sure, without any *art* of wilfully leading a witness astray, even if I might be deemed capable of that baseness. Does not Mr. Lowell himself furnish an apt illustration of this? He says, "We are not favoured with the questions as put; but three of the witnesses say, 'He [Mr. Lowell] did not say that the letter charged Mr. Brooks with dishonesty, or Mrs. Lyman with being a spy in the house,'—no one of the others, be it observed, having said that I did. I submit to every lawyer, under whose eye these pages may come, whether the words 'spy' and 'dishonesty' were not put into the witnesses' mouths." [L. p. 7.]

Now I confess, that, having heard, from Mr. Lowell, that such was a part of the contents of that letter, and desiring to know, whether he had disclosed this to the jury, I very bluntly asked those witnesses, who spoke of the letter, whether Mr. Lowell did not say that it contained the words above quoted. This was very unprofessional, no doubt ; and if it was a *leading* question, as I suppose it was, I leave it to all the lawyers of the Suffolk Bar to say, whether the *effect* was not to lead the witnesses *exactly the wrong way*. Instead of testifying that Mr. Lowell *did* say so, every one of them said, point blank, that he *did not*. I leave it, therefore, again, to the lawyers, to say, whether I should have put such a question, if I had talked the witnesses over beforehand, and taught them how to answer me, as Mr. Lowell supposes.

But Mr. Lowell points out "one irrefragable proof," that the words, ascribed to him by some of the witnesses, must have been prompted by Mr. Brooks. It is this :—that I supposed the final bargain for the sale of the house to have been made by Mr. Lowell,—which he shows from a passage in my pamphlet,—whereas, Mr. Lowell says, that the bargain was, in fact, made by Mr. Boott himself ; and he further states, that he, Mr. Lowell, never personally requested the heirs to execute the deed,—which latter fact he shows also to have been stated in my pamphlet. He then quotes the declaration of Mr. Andrews, one of the jurors, who said, that Mr. Lowell testified, "that he, John A. Lowell, had *concluded a sale of the estate* in Bowdoin Square ; that upon an investigation of the title, a doubt existed, as to whether Boott, as executor, could convey that estate, and that it was necessary that the heirs should join in the conveyance ; that he, Mr. Lowell, *called upon the heirs* to obtain their signatures," &c. Now, argues Mr. Lowell, since I did *not* make the sale of the house, and since Mr. Brooks *supposed that I did*, it is plain, that Mr. Brooks must have put this into the mouth of the witness. [L. p. 8.]

In answer I might retort the argument. Since it appears, by Mr. Lowell's own showing, that I did *not* suppose Mr. Lowell himself had ever called upon the heirs to obtain their

signatures to the deed, and since Mr. Andrews says, that Mr. Lowell stated that he *did*, his own process of reasoning proves, that this witness could not have got his ideas from *me*, and did *not* testify from my prompting.

But how does it happen that the witness and I should, both, have got the same idea of Mr. Lowell's having made that bargain? I answer, we both got it from the same excellent authority,—Mr. Lowell himself. Although the actual, final bargain may have been, as Mr. Lowell now says, concluded by Mr. Boott, and Mr. Darracott may have dealt directly with Mr. Boott in making it, Mr. Lowell will hardly deny that he had a general agency in that business;—that he had himself made one previous bargain which fell through;—that the note, given for the purchase-money, on the final bargain, came to his hands;—that he was Mr. Boott's negotiator about the settlement with the heirs;—and that he always spoke and acted as if he were the general head and conductor of the whole affair. Indeed, the letters of Mr. Darracott, printed by Mr. Lowell, [L. pp. 153, 154.] show, that pending the negotiation, Mr. Darracott always communicated to Mr. Lowell what had passed between him and Mr. Boott on the one hand, and between him and me on the other. It was very natural, therefore, for Mr. Lowell, even if Mr. Boott did, in truth, make the original bargain, to speak of it in such terms, that a hearer might infer that Mr. Lowell had made it, when that particular fact was not a point directly in question, but an immaterial circumstance. *My* impression was, certainly, derived from nobody but Mr. Lowell; and I see no reason to doubt that Mr. Andrews derived *his* from the same gentleman, in the course of the conversation, after the inquest, when Mr. Lowell, probably, used many loose and strong expressions, which he might not have used in the giving of careful testimony.

It was then, probably, that he spoke to Dr. Palmer of the “*triumphant vindication*” of Mr. Boott by the accounts, and used to Mr. Learnard “so remarkable an expression” [L. p. 9.] as that “Mr. Brooks was a violent man^{*};” and, considering the business of the inquest concluded, he may have forgotten,

in other unguarded phrases, the great caution and reserve, with which he probably intended to testify, and thinks he testified, and perhaps did, while he was speaking under oath, although the jurors, not having their attention called to distinguish between testimony and conversation, speak of it all as if it were said on the witnesses' stand. So that, after all, Mr. Lowell's "irrefragable proof" comes only to his own present assertion, that he did not make a certain bargain, which he had, always before, caused others to understand that he did make. The supposed proof is founded, entirely, on his own perfect conviction, that he never makes a mistake, nor says one word more or less than strict accuracy requires.

One other comment on the evidence deserves notice for its curiosity. Mr. Lowell says, "I appeal to every man conversant with human testimony, to consider what is the value of evidence so *procured*, after the lapse of nearly two years, when the most upright and conscientious men are so liable to *confound what was said by one witness on the stand with what may have been said by another*, or with impressions received *aliunde* at the time, or afterwards gradually made by repeated inquiries and insinuations." [L. p. 6.]

The reader has already seen upon what the hypothesis of the "repeated inquiries and insinuations" is founded; but he must be at great loss to understand the foundation of the other suggestions in this sentence, when he remembers, that the only witnesses examined at the inquest, besides Mr. Lowell, were Mrs. Lyman and the two women servants in the house; and that their evidence, as Dr. Putnam states, "related *chiefly* to the individual peculiarities of the deceased." [L. p. 14.] If Dr. Putnam had added to this "their observation of the movements of the deceased on the preceding night, and their discovery of his death, that morning, with its attendant circumstances," he would have stated the *whole* of their evidence.

Which, then, of these *females*, does Mr. Lowell mean to suggest, might, possibly, have been *confounded with him*, in the minds of the jurors? Is it not an affront to the reader's

understanding, to throw out the idea, that any one of the things, which I consider a subject of complaint, and which the jurors attribute to Mr. Lowell, *might* have been said by *some other witness*, when there was *no* other witness *there*, who could, possibly, have said any thing about the state of the accounts, the sale of the house, and the other business transactions, which were the subjects of *his* testimony and conversation?

As to "impressions received *aliunde* at the time," who was there, "at the time," but himself to convey them? Does he mean to suggest, that they might have come from Dr. Putnam, or Mr. Kirk Boott? If so, he might easily have proved the fact. Not an individual else was present with the jurors, the coroner and the constable,—all strangers to the deceased and his concerns,—except Mr. Lowell and the female witnesses; and the latter were present only while testifying.

In respect to impressions supposed to have been "*afterwards, gradually*, made, by repeated inquiries and insinuations," I can only say, that I never even *asked a question* of any *one* of the jurors until just before, or at, the examination. I appeal to them for the fact;—and for the purpose of dissipating all these groundless suggestions, I now propose to Mr. Lowell to have those gentlemen, once more, called together. Let us meet, face to face, in the presence of all of them, and hear what they will say upon this matter, or upon any other matter connected with that inquest, and with their declarations, which Mr. Lowell may venture to make the subject of interrogation. I should be extremely glad, with the additional knowledge I now have of the truth of this case, to have their testimony taken over again *in the presence of Mr. Lowell*. I propose this. If it be not agreed to, let us hear no more of these charges and insinuations, against me, and the jurors, and the magistrate, of *colluding*, to create unfair or exaggerated testimony.

To conclude this matter of the alleged unfairness of the examination, and worthlessness of the evidence, I will now present a letter, on that subject, from the gentleman, who took the declarations, and then leave it to Mr. Lowell to settle the

question with the jurors, severally or collectively, whether they were, as he suggests, mere instruments of my tuning, or whether they had not some notes of their own to utter.

LETTER FROM MR. JOHN PHELPS PUTNAM.

"16 Court Street, April 26, 1848.

"DEAR SIR:

"Your note of the 25th inst. has been received, in which you call my attention to certain statements in a pamphlet lately published by Mr. John A. Lowell, in reference to the examination of certain witnesses before me, and wherein you ask me to state my recollection of the manner, in which that examination was conducted, and also who first called upon me in reference to taking the testimony.

In reply, I would say, that I was first applied to, in reference to this matter, by Mr. Sidney Bartlett, and that I had no personal acquaintance with you until the day of the examination. When the witnesses came before me, I stated to them that the examination was not an official one, and that I was only to take down their declarations, as they saw fit to make them, and I believe that you, also, said to them something to the same purport.

"I cannot now state very particularly, as to the manner, in which the questions were put by you, or how far any of them might have been open to the legal objection of being *leading* in their character. It was, of course, necessary for you to direct the attention of the witnesses to the points, upon which you wished their testimony; but I have no recollection of any thing, in your manner of examination, like 'putting words into their mouths,' or of any thing, in any part of the proceeding, which could be characterized as 'unfair,' in the least degree.

"Very respectfully, yours, &c.

"J. P. PUTNAM.

"EDWARD BROOKS, Esq."

CHAPTER XIII.

MR. LOWELL'S WITNESSES.

After this assault, by insinuation, on five respectable witnesses, as persons, whose evidence was so *got up* that it ought not to be believed, Mr. Lowell says, “I shall now proceed to present the testimony of the remaining four persons, who were present at the inquest, but not at the examination, viz. the coroner, Dr. Putnam, Mr. Kirk Boott, and *myself*”! [L. p. 10.] This he thinks of a superior quality; yet it consists of statements entirely *ex parte*, and open to more than every objection taken, by Mr. Lowell, to the testimony produced by me.

The *coroner's* statement, by the way, is nothing new. It is the very same, which I had already printed, in a letter from Mr. Loring to Mr. Dexter, dated March 12, 1845. As Mr. Lowell correctly says, it appears in the Appendix to my pamphlet. But he also says, that it was “*not* presented with the other testimony *in the text*, and is put *entirely out of view* in his [Mr. Brooks's] *commentary* upon that testimony.” [L. p. 10.]

This is another of Mr. Lowell's unfortunate mistakes; for, *besides* printing it in an appendix, I quoted the coroner's statement, *verbatim, and at full length, in the body of my text*, [B. p. 152.] and compared with it the statements of the several jurors, on the subject of the letter of the deceased, produced at the inquest,—which subject had led to the coroner's statement. [B. p. 154.] I referred to it again, with particularity, as evidence on another point, in my concluding remarks. [B. p. 163.]

The essential difference, in our respective modes of presenting the coroner's statement, is this:—I printed it *in full*, without the suppression of a single word; whereas Mr. Lowell

prints it under this heading,—“THE CORONER’S STATEMENT,”—*as if* it were the whole, and yet *omits* an entire sentence—a sentence of some consequence, too, since it discloses the fact, that Mr. Franklin Dexter, whose general accuracy Mr. Lowell admits, [L. p. 168.] declared, that he (the coroner) had stated a part of the same matter differently at another time,—which is quite material to the credibility of the statement. The omitted sentence is in these words:—“That Mr. Dexter was mistaken, in saying that he (Mr. P.) said that he saw, or heard, the greater part of the letter—that it was a very long letter and very little was read to him.” I ask the reader to compare the two statements, as printed in my pamphlet, [pp. 152, 153.] and in Mr. Lowell’s, [p. 12.] and he will see this difference. I also refer him to Mr. Dexter’s letter of March 13, 1845, written after receiving notice of this denial by Mr. Pratt, in which Mr. Dexter says, “I now state, in brief, that I am *quite sure* I reported Mr. Pratt correctly in substance,” &c. [B. pp. 153, 154.]

Mr. Lowell, not only prints the statement with this suppression, but remarks upon it, that “It was rendered within a few days after the inquest, when all the facts were fresh in his mind, and was *not elicited by any intimation of what Mr. Dexter had reported him to have said*, or of any points between the parties, as Mr. Loring expressly states in his letter communicating it to Mr. Dexter.” [L. p. 10.]

Now it is true, that Mr. Loring’s letter does contain a remark to that effect; but, if Mr. Pratt had not, in some way, been informed of the object of the interview, how happened he to say, “*Mr. Dexter is mistaken in saying,*” &c.?

It may be that the conversation was *begun*, by Mr. Loring, without stating to Mr. Pratt the object of the inquiries; but it is very plain, from Mr. Pratt’s remark, that this caution was forgotten, by somebody, long before the conversation ended. Yet Mr. Lowell, not content with referring to this expression in Mr. Loring’s letter, declares anew, on his own authority, that the coroner’s statement, (by which must be understood the whole of it,) “was not elicited by any intimation of what Mr. Dexter had reported him to have said;”

and he suppresses a sentence, from the *midst* of that statement, which proves that the coroner *then*, at least, knew the fact that Mr. Dexter had so reported him. If the language of Mr. Lowell *can* be *literally* true, still, when coupled with the omission of a part of Mr. Pratt's statement, it serves to mislead the reader, on a point, which affects, materially, the credibility of that statement ; and this omission, by Mr. Lowell, is not much amended by his quoting the omitted sentence in another part of his pamphlet, after an interval of *nearly one hundred and sixty pages*, when he had occasion to *use* it for a particular argument. [L. p. 168.]

Mr. Lowell, however, after pointing out the grounds, on which he claims a superiority of credit for the coroner's statement, concludes, that "evidence *so* given [that is, privately to Mr. Lowell and his counsel, in the presence only of a young student] will, in the judgement of persons *competent* to judge, outweigh a volume of such as Mr. Brooks has *procured*, under the circumstances above enumerated." [L. p. 10.] For myself, I must be permitted to doubt, whether any reader, who reads *both* sides, will be found of sufficient *competency* to form such a judgement.

Dr. Putnam and Mr. Kirk Boott are next commended, as witnesses of peculiar value,—not because their statements were made, like the coroner's, nearer to the time of the inquest, and while their recollections must have been fresher than those of the five jurors,—on the contrary, they were, in fact, a little later ; but a reason is assigned, for giving them unusual weight, which strikes me as curious. It is, that they "were both *conversant* with my [Mr. Lowell's] situation in relation to the deceased and his family, and were, *therefore*, more *competent* than strangers *to appreciate my conduct* at the inquest." [L. p. 10.] They "would take the *deepest interest* in the evidence presented at the inquest, and therefore pay the strictest attention to it." [L. p. 15.] That is, they knew something of the matter beforehand, and were prepared, with preconceived opinions and prejudices, to hear what their friend Mr. Lowell had to say, and are, on that account, better witnesses than merely *impartial* persons, on

the general question, whether Mr. Lowell testified in a manner, of which I have a right to complain. Is not this something new under the sun? The *principle* seems to be, that the more *bias* a witness has, the more *credit* he should carry!

Now it is needless for me to say of these two gentlemen, that, on the score of upright intention, no persons in this community are, in my belief, entitled to more credit than they. On the other hand, it is not suggested, in the "Reply," that the witnesses, whom I examined, are not, also, entitled to be respected as men of truth; and they, certainly, were free from any imaginable temptation to tell an intentional falsehood. But the question is, which *kind* of witness is likely to be most accurate in his recollection of the *general effect* of what Mr. Lowell said, *in its bearing upon my reputation*, as well as of the *particular facts*, that were stated,—he, to whom the facts, so impressive in their character, were all *new*, and therefore more striking, and who had no *previous* idea of the relations of parties, and of the merits of the controversies,—or he, who knew the relations well, and who was remotely concerned in these pending controversies, or connected with those, who were, and who had a set of ideas, applicable to the case, already derived from Mr. Lowell, or from other sources? Such a question cannot admit of two answers,—especially when the very point in dispute is, whether Mr. Lowell testified fairly towards me, upon a state of facts, the *truth* of which *he asserts*, and *I deny*.

Mr. Lowell, himself, illustrates the comparison, when he shows how strongly these witnesses must have been imbued with his notions on the merits of the previous controversy in the family, respecting Mr. J. Wright Boott's conduct and accounts, and his fitness to be a trustee; for Dr. Putnam, it seems, on the evening of the inquest, expressed to a friend, "in strong terms, his sense of the *extreme caution and forbearance*," which Mr. Lowell had shown in his testimony; [L. p. 10.] while Mr. Kirk Boott, on the same evening, told his mother, that Mr. Lowell "had testified with *a reserve and tenderness towards the absent, and a self-possession*," which, his "*known attachment*" to the deceased, "and the excite-

ment attending so horrible a catastrophe rendered *quite remarkable.*" [L. p. 10.]

Had I sought, I could hardly have found, terms better suited to show how completely these gentlemen *sympathized* in Mr. Lowell's views and feelings, believing, as they doubtless did, every word, uttered by him, to convey an oracular truth. Yet, whether he was *forbearing* and *tender* towards the absent, or the reverse, depends, obviously, on the *truth* and *justice* of his and their views of the *previous facts*,—which facts are the very matter now in issue. By what other standard, than either their own prior conception of the facts of the case, or Mr. Lowell's statement of them at the time, could they, possibly, have determined, in their own minds, whether he was *tender* and *forbearing*, or not, towards absent persons, whose conduct was alluded to? The idea, clearly, involves *judgement* on the *merits of that conduct*; and shows that, in the opinion of those gentlemen, the individuals, so pointed at, well deserved marked reprobation. It is obvious, that, in their minds, I was already condemned, without a hearing. Does the reader then see cause, on this ground, to place the testimony of these two witnesses, who, on Mr. Lowell's own showing, were thus prejudiced in the case, so infinitely above that of five, who had no prejudice? And here, again, since Mr. Lowell says so much about *fairness* of proceeding, I ask, why he did not give me fair notice of his intention to take testimony on this subject? Why, if his object was "to elicit the truth," did he not give me opportunity, as I, on a like occasion, had given to him, to be present at an examination of these witnesses, to hear what they had to say, and to put questions, if I pleased, instead of causing them to prepare *ex parte* statements, of which the *first notice* to me is their appearance in print?

Besides, when these gentlemen speak of the *tenderness* and *forbearance* of Mr. Lowell towards the absent, let it be noted, that they confine their remarks, expressly, to the *testimony*, which he gave under oath. They do not refer to what he said in *conversation*, after the inquest. Mr. K. Boott, indeed, told me, that, although he saw Mr. Lowell con-

versing with the jurors, he did not distinctly hear what was said to them.

This fact,—the subsequent conversation,—explains, to my mind, much, that was otherwise difficult to account for. What things were *said* by Mr. Lowell, in the hearing of the jurors, cannot be doubted, upon the concurrent testimony of so many intelligent and unbiased witnesses. That some of those things should have been deliberately stated by him in the solemn form of sworn testimony, was difficult to believe.

CHAPTER XIV.

SUMMARY OF ALL THE EVIDENCE RESPECTING MR. LOWELL'S TESTIMONY AT THE INQUEST.

I presume every reader is, now, fully prepared, from the course of Mr. Lowell's remarks and insinuations, to find some direct, positive, and startling opposition, between his witnesses and mine. But how is the fact? Will it be believed, that, after all this parade of circumstances, supposed to detract from the credit of one set of witnesses, and to enhance that of the other, it turns out, that no one, of the three witnesses, relied upon by Mr. Lowell, has ventured to gainsay a single word, which had been testified by either of the five, whom I caused to be examined? Yet, every reader, who will take the pains to compare, carefully, their several statements, will see this, and that there is, really, no essential discrepancy among them; none, at least, which is not adequately accounted for by the conversation after the inquest, when all were not listening to the same remark at the same time, and by the different states of mind, in which the several witnesses *estimated the effect* of what Mr. Lowell said, in its bearing upon me.

There is no direct *contradiction* among them as to the *facts*, which Mr. Lowell stated. They differ, only, in the manner of expressing them, or in the degree of particularity, with which they describe his testimony. Indeed, the statements of Mr. Lowell's witnesses, and his own statement, are extremely general. They, apparently, avoid going much into particulars. Let us briefly compare them with the more formal declarations of the jurors.

In the first place, the witnesses, examined on my part, concur in showing, that they derived, from the whole testimony, a general impression, that the death was attributed by Mr. Lowell to the effect, on a sensitive mind, of the difficulties about the settlement of Mr. Boott's accounts, and his alleged mismanagement of his father's estate, and the refusal of some of the heirs, on that ground, to execute a certain deed. Now it is remarkable, that Mr. Lowell's witnesses, brought up expressly to counteract mine, do not deny, that they had the same impression, although their general descriptions of Mr. Lowell's testimony do not show, quite so clearly and strongly, that this impression was a necessary inference from the testimony *alone*.

How is it, then, when we come to the *particulars* of what Mr. Lowell *said*? The five jurors declare, that Mr. Lowell spoke of dissensions in the family, and do *not* say that he expressed any *direct opinion* on their merits. [Ante p. 77.] Both Dr. Putnam and Mr. Kirk Boott state the same fact; [L. p. 13.] and the only difference, in their manner of stating it, is, that they declare, affirmatively, that Mr. Lowell did *not express* his opinion. The coroner says nothing about it.

The five jurors declare, in substance, that Mr. Lowell spoke of an idea of mismanagement, entertained by some of the heirs, and stated, that Mr. Boott was summoned, in consequence, to settle his accounts, as executor; that these accounts were disputed; that he [Mr. Lowell] made them up himself, as some say, or examined them himself, as others say; that it turned out, that, instead of a deficiency, there was a balance due from the estate to Mr. Boott of \$25,000; and that Mr. Boott's feelings were much hurt by the conduct

of these heirs. [Ante pp. 77-8.] No one of Mr. Lowell's witnesses denies either of these statements ;—on the contrary, each, so far as he goes, tends to confirm them. The coroner says, “Mr. Lowell stated, that *Mr. Boott's accounts* had been *disputed*, but that they had been *passed*, and he, [Mr. Lowell] had *supposed that his mind was relieved* on that point.” [L. p. 12.] This is all the coroner says on the subject. Mr. Kirk Boott says, “ You told him, that *my uncle's accounts*, had been *disputed*, but that they had been *settled* some time since. You did not *say* by *whom* his accounts had been disputed, or that *you considered this to have induced his death.*” [L. p. 13.] This is all Mr. Kirk Boott says on the subject. Dr. Putnam's recollection of Mr. Lowell's statements on the same point is, “that *Mr. Boott had lately made up his accounts*, as executor of the estate of his father ; that *objection had been taken* to said accounts *by some of the heirs*, but that they had been finally *passed* ; that, pending the settlement, Mr. Boott had been *much troubled in mind*.” [L. p. 13.] Mr. Lowell's own statement, drawn up, he says, at the time of our correspondence, [L. p. 11.] represents, that, in reply to the question, whether “he had known of Mr. Boott's being *troubled in mind* on any subject,” he stated, “that there had been *family dissensions*, of the merits of which I knew nothing ; that latterly Mr. Boott had been *summoned to settle his accounts*, as executor of his father's will ; that he had presented an account at the probate office, showing *a balance in his favour*, which had been *allowed*.” These statements, therefore, of Mr. Lowell and his witnesses, taken together, affirm, positively, that he testified, that there was a *dispute* between Mr. Boott and some of the heirs, *relative to the accounts* of his executorship ;—that he was *summoned* to a settlement ;—that the account presented in the probate office showed *a balance in his favour* ;—that it was *disputed, and was, notwithstanding, passed* ;—and that, pending this settlement, he had been *much troubled in mind* ; and while they make these affirmations, agreeing entirely, in substance, with those of the five jurors, they do *not deny* the further statements of those witnesses that he said the balance in Mr. Boott's favour

amounted to \$25,000, and that he (Mr. Lowell) had made up, or examined the accounts himself, and that the idea of mismanagement, as executor, was entertained by some of the heirs,—which, indeed, would seem to be involved in the fact of their disputing his accounts. So that the several statements, on this head, are perfectly consistent.

Again, the five jurors declare, that Mr. Lowell said, in substance, that, *pending* this question of the accounts, and *notwithstanding* the balance was found to be in Mr. Boott's favour, *some of the heirs refused to execute a deed of the house.* [Ante pp. 77-8.] Neither the coroner, nor Mr. K. Boott, nor Dr. Putnam, alludes to this at all; but Mr. Lowell's own statement admits, that he said, Mr. Boott "had been somewhat *troubled in his mind by a refusal of some of the heirs to sign a deed of the house,* but that this had finally been done;" [L. p. 11.] and this stands in immediate connexion with the statement, that he had been *summoned*, (which was untrue,) to settle his accounts as executor, that the accounts were presented in the probate court, and showed a balance in his favour, and were *allowed*;—the inference from which, (contrary to the fact,) is, that they were allowed by the judge of probate, *notwithstanding the opposition of the heirs, who had summoned him.*

On another point, which was in question, Mr. Lowell said, in our correspondence, "I did not mention *your name*, or that of any other person before the coroner's jury, in connexion with the unhappy dissensions in Mr. Boott's family." [B. p. 15.] The idea conveyed by this was, that he did not mention my name at all, in either close, or remote, connexion with that subject.

Of the jurors, whom I examined, Mr. Andrews and Mr. Brown did not speak to this point. Dr. Palmer said, "My impression is, that he mentioned Mr. Edward Brooks's name *as one of the heirs;* meaning, as appears by the context, one of the heirs, who called for accounts and refused to sign the deed. [B. p. 28.] Mr. Learnard said, "he particularly mentioned the name of Mr. Edward Brooks as one of *such* heirs;" i. e., heirs, who objected to signing the deed. [B. p. 29.]

Mr. Dyke said, "he stated, *in particular*, the name of Mr. Edward Brooks, *as among the heirs, who refused to sign the deed.*" [B. p. 30.] Now what say the witnesses on the other side? The coroner's statement is, "that, Mr. Lowell had never mentioned Mr. Brooks's *name* in his presence, *except* in reply to the question, who were the members of Mr. Boott's family." [L. p. 12.] Dr. Putnam, following Mr. Lowell's letter, says, you "expressed no opinion in regard to such dissension, nor did you mention the *name* of any person *in connexion with it.*" [L. p. 14.] Mr. Kirk Boott, on the other hand, states this in a form, which seems to explain the coroner's exception, and also to explain what Dr. Putnam means, when he says Mr. Lowell did not mention the name of any person *in connexion* with the subject of the dissension; for, Mr. K. Boott says, "you *named* to the coroner *the different members of the family, but did not state who were the friends of my uncle and who were not.*" [L. p. 13.] And finally, it is admitted, by Mr. Lowell's own statement, as he now presents it, [L. p. 11.] that, "in answer to a general inquiry, who were the members of Mr. Boott's family, I [Mr. Lowell] *enumerated them*, beginning with the mother," &c. It is beyond controversy then, that he *did* mention *my name* as one of the heirs, in the course of the same testimony, which described the facts of family dissensions, disputed accounts, and a refusal to sign a certain deed, by which Mr. Boott had been much troubled in mind; and the whole difference among the witnesses comes to one of *degree*, as to the closeness or remoteness of the connexion between my name and the other topics. Indeed, the differences of the witnesses, throughout, are those merely of degree and colouring, from Mr. Learnard, who says Mr. Lowell declared, that "Mr. Brooks was a *violent man*," down to Dr. Putnam and Mr. Kirk Boott, who say, that the manner, in which he spoke of the absent, was truly *tender and forbearing!*

But the only fair question upon this point,—the use of my name,—is, whether or not my name was so used, that the jury must have understood, from all that was said, and, from the circumstances of the case, as made known to them, that

I was one of the persons, who disputed the accounts, and refused to sign the deed, on the ground of an alleged mismanagement, which was disproved by the act of the judge of probate, in allowing the accounts with a balance in Mr. Boott's favour, notwithstanding the opposition of these persons. And who can doubt this, when several of the jurors declare that *they so understood it*, and *no one* of the witnesses, on either side, states that *he understood otherwise?* Mr. Lowell suggests, indeed, that the dissensions of the family, and my part in them, were already quite notorious, and did not need to be stated by him for the information of the jury. [L. p. 6.] *So much the worse for Mr. Lowell.* So much the more readily would the jury apply to *me* any remarks he made on these subjects, and understand that they had *his authority* for the impressions they derived from the whole testimony.

Another point in question was, what was said about the *letter* of the deceased, which Mr. Lowell produced, and whether any part of it was read. The coroner had said to Mr. Loring, soon after the inquest, that he "inquired of Mr. Lowell if the letter alluded to the suicide, and he said it did;" —and "that he [the coroner] did not know, till this moment, [the time of his statement to Mr. Loring,] that Mr. Brooks's name was mentioned in the letter." [L. p. 12.] The inference from this would be, that *no part* of it was *read*, and that nothing else was *said* about it. Of the witnesses, whom I examined, Mr. Andrews did not speak of the letter. Mr. Dyke only mentioned its production, and no particular question was put to him respecting it. Dr. Palmer's statement was, that Mr. Lowell "said it contained his (Mr. Boott's) will, and made him his executor, and requested him not to think the worse of him for the course he had taken." "My impression is, that he was asked if there was any thing more in the letter, which *bore upon the case*, and he replied there was *nothing more.*" [B. p. 29.] Mr. Learnard declared, that "the coroner asked him [Mr. Lowell] if it contained any thing *except of a business nature*, and he said *it did not.*" [B. p. 29.] Mr. Brown said, "he [Mr. Lowell]

read a part of the letter, which said, that he, Mr. Boott, hoped, that the method which he took to *end his wretchedness*, would not lead Mr. Lowell to think the worse of him. I asked Mr. Lowell if there was any thing else in the letter, which *bore upon the case*. He said he had read *all, which related to it.*" [B. p. 30.] To three of these witnesses I put the particular question, whether Mr. Lowell said any thing about its charging me with dishonesty, or about its charging Mrs. Lyman with being a spy in the house, and they said he did not.

Now what say the new witnesses? Nothing, certainly, which mends the case for Mr. Lowell. Dr. Putnam's statement is, "You produced a letter recently received from Mr. Boott, relating, as you said, chiefly to *private affairs*. The coroner declined hearing any thing of a *private* nature; and, under his direction, *you read* such portions only as *he* considered requisite, and sufficient for the proper investigation of the case." [L. p. 14.] By this, it would seem, in confirmation of the statement of Mr. Brown, that some portions of the letter were *read*; and that other portions, which Mr. Lowell said related to *private affairs*, were *not* read. What the parts read related to, Dr. Putnam does not inform us. According to Mr. Brown, they spoke of the means taken by the deceased to *end his wretchedness*. But what did Mr. Lowell *say* respecting the parts, which were *not read*? According to some of the witnesses, he said, *they did not bear on the case*. According to Dr. Putnam, he said, *they related to private affairs*. But, according to Mr. K. Boott, he also gave some idea of the *nature* of those affairs; for *he* says, "You [Mr. Lowell] told him [the coroner] you had received a letter, written by my uncle the day of his death; that you would prefer not to show the letter, *as it CONTAINED CHARGES, which he was not here to substantiate*. The coroner did not *see* the letter, [i. e. at the inquest] neither did you state to him any thing it contained *relative to family troubles*." [L. p. 13.]

According to this, although no *particular* of its contents, relative to family troubles, was stated or read, the jury were

informed, as a reason for not reading it, that "it contained *charges*, which he [the deceased] was not here to substantiate." Charges against whom? It does not appear that Mr. Lowell mentioned my *name* in that *immediate connexion*; but, from the whole testimony, taken together, was not enough disclosed to the jury, to authorize them to infer, that the charges were against those of the heirs, who had disputed the accounts and refused to execute the deed? Who they were, Mr. Lowell says truly, was very notorious. What were the jury to think of this intimation of charges, which could not be disclosed, coupled with the extraordinary facts, which were stated, and the opinion of Mr. Lowell, that the deceased was *not insane*? The withholding of the letter, though consented to by the coroner, was regarded by the jury as very strange. They were put to wonder and conjecture about it. Mr. Brown, the foreman, says, "I have been frequently on inquests. It has been invariably the case, that all papers, calculated to throw light upon the case, especially those written soon before the death of the deceased, should be *given up to the jury*. I never knew before an exception. The fact of his not giving up the letter made an unfavourable impression on my mind." [B. p. 30.] Dr. Palmer says, that though Mr. Lowell stated there was nothing more in the letter, which bore on the case, "My impression was, that there was something more in the letter, from his not being willing to give it up." [B. p. 29.] And Mr. Andrews says, though speaking of the testimony of Mr. Lowell generally, and not of the letter in particular, "I remarked to Mr. Dyke, and I suppose I made the remark generally, that there was *something behind the curtain*, which we did not see; and that we should probably hear more of this matter." [B. p. 28.]

My present object, however, is not to discuss the *propriety* of Mr. Lowell's course at the inquest, or the *truth* of what the jury understood from him; that will be done in due time; I am now only looking at the *new evidence*, produced by Mr. Lowell, respecting his testimony, to see how far it *alters the case*, formerly shown by me; and upon this point,

of the contents of the letter, I only call the reader's attention, now, to the fact, that the statements of *his* witnesses do not *contradict* any thing said on that subject by the witnesses, whom I examined; but they *add a new fact*, which seems to be material, namely, the fact, that Mr. Lowell said the letter contained CHARGES *against somebody*; and that, since the writer was not there to substantiate the charges, it was a reason why the letter should not be read, or laid before the jury. This mystery, made about the letter and its charges, helps, I think, to account for the strong impression produced upon the jury. It is also remarkable, that Mr. Lowell, in his own statement, prepared at the time of our correspondence, does not say *one word about this letter*; although that statement purports to be a complete account of the substance of his testimony. [L. p. 11.] And if that was, in truth, the whole of it, and the whole of what he said in conversation, on the same occasion, why should he have been unwilling to disclose it to me at the time of our correspondence,—especially if he felt confident, as he now affects to be, that there was nothing objectionable in the *accounts*? If there were nothing to *conceal*, why, when I asked him, did he not frankly tell me what his testimony had been, and thereby take away, at once, the principal *excuse*, which he says I was always *seeking*, for a *publication*?—especially when he took pains to assure me, that his *motive* for answering me at all, was “a hope that it might *relieve* the *unpleasant feeling* and *misapprehension* under which you [Brooks] laboured.” [Letter from Mr. Lowell, B. p. 16.]

The five jurors speak of several other particulars of Mr. Lowell's testimony, which are not adverted to by his witnesses. These, of course, stand entirely uncontradicted, unless by himself. Mr. Lowell's own contradiction is confined to a few expressions, which he thinks he could not have used, forgetting, as he evidently does, the loose conversation, which followed the testimony; as is proved by two of his own witnesses. But what is curious enough, considering that we deal with a man of such scrupulous accuracy, is, that

the particular expressions, which he selects for contradiction, and distinguishes by quotation marks, as if they were extracted, verbatim, from the declarations of some of the jury-men, are not to be found, as he quotes them, in those declarations. The passage, I refer to, is as follows ;—“I am confident that I did not say that I, ‘as a friend of the family, had examined the accounts, and found that there was no ground of complaint ;’ nor that I had ‘so represented it to the heirs ;’ nor that ‘some of them had, notwithstanding, refused to sign a deed of the house.’ Indeed such statements have an inherent absurdity,” &c. [L. p. 11.]

Now, although these quoted expressions are to be found, very nearly, in one of my letters to Mr. Lowell, written before the examination of the jurors, and stating the *information* I had then received respecting his testimony, they are not expressions used by either of the witnesses in *their declarations*, which were all I relied upon in my pamphlet. The ideas may be similar; but these are *not their words*; and when Mr. Lowell is labouring to show, that the testimony of the jurors ought not to be believed, because I had put words into their mouths, why does he, while giving the reader an impression that he is contradicting *their statements*, select expressions from *my letters* instead of *their declarations*? He himself first puts words, which they never used, into the mouths of the witnesses, and then denies that they are true.

The witnesses, indeed, do say, unfortunately for Mr. Lowell’s denial, what comes, *in effect*, to the same thing, though not in those precise words; and such statements have, according to Mr. Lowell, an “inherent absurdity.” Why? Because, he says, “The refusal to sign the deed occurred in May, 1844; no request that they [the heirs] should sign it was, *after that period*, ever made to them; whilst the accounts were not made up, or presented, until November, 1844.” [L. p. 11.] The refusal, by the way, first occurred in April, not May; but I beg to ask, whether there was not a *continuing refusal*, to sign the deed, from that time, until the final settlement was agreed upon? The accounts were not made up, or rather not presented, it is true, till Nov. 18, 1844; but,

it is also true, that the settlement was not agreed upon until sometime in December ; Mr. Lowell himself says, Dec. 11. [L. p. 191.] In the mean time, (some of the heirs having originally refused to execute the deed without a change of the trustee, which involved a settlement of accounts,) if the request for its signature was not formally renewed, after the accounts were presented, it was only because the original ground of refusal still continued unchanged, until the agreement of compromise was made. Before that event, Mr. Lowell was negotiating with me, or my counsel, Judge Warren, to induce us to allow the account, in order that the deed might be obtained. It was literally true, therefore, that Mr. Lowell's statement of the result of the accounts *was* represented to the heirs, and that some of them, notwithstanding, *did*, continually, refuse to sign the deed, until it was, at last, otherwise agreed, on a compromise. So that Mr. Lowell might well have stated this to the jury, just as it was expressed in my letter, without the absurdity of attributing "an antecedent event to a subsequent cause," which, he says, "requires a peculiar constitution of mind," and to him "would have been impossible." [L. p. 12.] He *might* have so stated, consistently with truth; the jurors, in substance, say, he *did* so state; no one of his own witnesses denies it; and the reason he assigns, why he *could not* so have stated, is the supposition of an absurdity, which does not exist; for the account was presented on the 18th of November, and the deed in question was not made till the 14th of December. The dates of the papers put this beyond dispute.

In respect, therefore, to the substance of Mr. Lowell's testimony at the inquest, enlarged by what he said to the jurors in the conversation, which immediately followed it, there cannot be any important question, upon a fair view of the evidence on both sides. The direct declarations of the five witnesses, examined in December, 1846, are so clear, upon its general complexion, that Mr. Lowell himself cannot but admit, that "they all agree," that his testimony "tended, more or less clearly, to the conclusion, that the death of

Mr. Boott was attributable to uneasiness of mind, caused by ‘the unhappy difficulties in the family, especially in relation to the estate,’” [L. p. 6.] of which the deceased had the management ; while he also admits that he stated his opinion, without qualification, that the deceased was not insane. The same witnesses all speak, positively, too, and with that general agreement, coupled with slight variations, which marks fair testimony, to certain particular facts, stated by Mr. Lowell, which led them to that conclusion, and pointed it at me, as the party, who had chiefly caused these difficulties, and this melancholy consequence. The statements on the other side, obtained by Mr. Lowell from the coroner, in March, 1845, and December, 1846, and the letters obtained by him from Dr. Putnam and Mr. K. Boott, in December, 1846, and January, 1847, are not found, upon a fair comparison, to contradict those declarations on any material point, but confirm them in such facts as they particularly speak of. And since those witnesses are all, by circumstances, favourably disposed to Mr. Lowell, and two of them plainly sympathize in his general views of the case, I ask, whether, if there were any essential error, or mis-statement, in the declarations of the jurors, Mr. Lowell would not have obtained, from these friendly witnesses, the decided correction, or direct contradiction, to which he would have been justly entitled ? His omission to do so, makes them, in effect, corroborative witnesses of the whole matter, and makes Mr. Lowell a witness against himself,—as indeed he is, to a great extent, by the terms of his own published statement, prepared, as he says, before he knew what the jurors would testify. His own unsupported contradictions, after that, can only prove inaccuracy of recollection or wilfulness in error.

CHAPTER XV.

OUTLINE OF MY FORMER STATEMENT RESPECTING THE ACCOUNTS.

We have, now, settled the point, I trust, that Mr. Lowell's remarks to the jury, whether in the form of testimony or of conversation, were, in substance, what I had supposed them to be. It is plain that their tenor was in entire accordance with the allegations, and the real or pretended opinions, which he has since had the temerity to print. The truth and justice of the printed "Reply" are next to be examined; and I shall proceed to demonstrate, from the evidence in my former pamphlet, and from the "Reply" itself, connected with other evidence contained in these pages, that the opinions it promulgates, if honest, are mistaken; that its arguments, though sometimes specious, are deceptive; and that its statement of fundamental facts is essentially untrue.

I propose to begin with the matter of Mr. J. Wright Boott's accounts, and the topics, connected therewith, regarding his fitness for a trustee, independently of the question of his sanity;—this being the matter, which I consider to lie at the foundation of the whole controversy between Mr. Lowell and myself. To be intelligible, I must make a brief recapitulation of the substance of my former statements on the subject.

Mr. Kirk Boott, the elder, died in 1817, leaving, as was reputed, quite a large property for that day, all personal, except a house, store, and lot of land, which were appraised at \$34,100 only. His will established particular trust funds, out of his personal estate, for the benefit, during life, of his widow and of two sisters. These funds amounted, in the aggregate, to \$111,111 12. The fund for the widow was \$100,000; the income of it was to be hers, and she had, besides, a life estate in the mansion-house. All the resi-

due of the personal property, except household furniture and other chattels, bequeathed to the widow, was given, equally, to the testator's children, nine in number. The reversion of the annuity funds and of the mansion-house was, also, given to them.

Mr. J. Wright Boott, the eldest son, by the effect of the will and other circumstances, united in himself the responsible posts of sole surviving partner, sole executor, sole trustee of the trust funds, and sole testamentary guardian of the minor children; so that the whole family property, except the mansion-house, was at his disposal; and the mansion-house he was empowered, as executor, to sell, on certain contingencies, with the assent of the widow.

The inventory, returned to the probate office, exhibited only the real estate and the chattels bequeathed to the widow. Its whole amount was short of \$37,000, of which the mansion-house constituted \$24,000, and the store in State-street, devised specifically to Mr. J. Wright Boott, in addition to his share of the general property, constituted \$9600. The residue of the real estate, appraised at \$500, was devised to the widow.

An account, settled by the executor in the Probate Court, in 1818, charged him with stocks purchased, to the exact amount (within one cent) of the particular trust funds, taking the stocks at par and excluding the premiums paid for them. The nominal foot of the account was a little short of \$117,000. Of this, however, \$10,000 was a mere counter-entry, representing that amount not yet payable on certain bank stock charged at its par. In other words, the account showed cash, realized and invested at that date, to the amount of nearly \$107,000, and an engagement to pay \$10,000 more, shortly, to complete an investment. It gave no further information concerning the estate; and no other account of the property was ever settled, or presented, until a controversy had arisen and a change of trusteeship had become necessary, more than twenty-six years after.

No settlement was ever made with any one heir, for his or her share of the property presently divisible, though mon-

ey were paid to, or for, the heirs respectively, sometimes specifically on account of their patrimony, and sometimes not, and with no regularity, or equality. The heirs never knew, and had no means of knowing, except from some occasional and general statements, verbally made by Mr. J. Wright Boott, what they were entitled to receive.

This arose from peculiarities of his character, which led him to wrap himself in total reserve on such subjects, combined with an extraordinary degree of deference and confidence on the part of every member of the family, and with a want of solicitude, quite unusual among so many persons, about mere pecuniary interests. These circumstances, habitually, restrained them from attempting to penetrate Mr. Boott's reserve by calling for a statement and settlement of accounts.

The family, until separated by marriages, all lived together, as members of Mrs. Boott's household, in a style of such liberal expenditure as belongs to people of fortune. Mr. Boott kept no accounts with the individuals, nor with the estate. His verbal statements, on particular occasions, uniformly represented, and caused it to be understood, that the dividend of each child, upon a final settlement, would be \$20,000 in possession or thereabouts, besides a share of the reversions. This was, in effect, a representation that the personal estate of the father had amounted to about \$180,000, besides the trust funds of about \$111,000. These sums, added to the inventory, would have made the whole property, real and personal, left by the father, upwards of \$320,000; for all which, except the property named in the inventory, (short of \$37,000,) Mr. J. Wright Boott, if the fact were as he represented it, stood accountable, as executor or trustee, to the nine heirs, of whom he himself was one. That is, he should have held, or accounted for, as executor or trustee, in all, over \$290,000, of which \$20,000, in immediate possession, and something more than \$12,000 in reversion at the deaths of the respective annuitants, belonged to himself. Of course, during the lives of the annuitants, he was bound to show \$111,000 secured in trust for them, and \$160,000

(i. e. \$180,000, less \$20,000 for his own share,) held in trust for his brothers and sisters, subject to be reduced by whatever sums he might have paid over, or should pay over, to them, out of the \$160,000, for account of their respective shares in it.

Mr. J. Wright Boott had been a partner with his father, about three years, under the firm of Kirk Boott & Sons. Another partner, but for a very short time, was the present Doctor Francis Boott, of London. By the direction of the will, the business of the firm was to be carried on, by Mr. J. Wright Boott, for the joint account of the estate and himself, till March 19, 1818, when it was to be wound up, and the estate distributed. The terms of the partnership were, three fourths of the profit or loss to the estate, and one fourth to Mr. J. Wright Boott, after deducting five per cent. interest on the capital employed.

The distribution directed never took place ; but, at the expiration of the term fixed by the will, Mr. J. Wright Boott took up the business in partnership with two of his brothers, (the late Mr. Kirk Boott, of Lowell, and Mr. James Boott,) and carried it on, under the old firm of Kirk Boott & Sons, until January 1, 1822, when that house was dissolved, and Mr. J. Wright Boott formed a new partnership with Mr. John A. Lowell, under the firm of Boott & Lowell, which firm prosecuted the same business till July 1, 1824, when that also was dissolved. My belief, as I stated, was, that the capital of the estate in the old house had been carried into the business of the new house of Kirk Boott & Sons ; that there had never been any accurate settlement of accounts between them ; and that nothing had been taken out, so as to be distinguishable as the separate property of the estate, except in the formation of the trust fund, by the investments described in the probate account of 1818.

The business of the second house of Kirk Boott & Sons, as conducted by the three brothers, appeared to me, from certain evidence, which I stated, to have been attended with great loss. That of Boott & Lowell, I had no evidence about. I also stated my reasons for believing that Mr. J.

Wright Boott, though commonly reputed to be a man possessed of some \$50,000, or more, in his own right, was really worth little or nothing, unless of a reversionary character, at the time of the formation of the partnership of Boott & Lowell ; and that, whatever losses were met with, in the mercantile business pursued after the death of the father, fell, in effect, mainly, upon the family property, and under circumstances, which made the executor personally liable for them to the heirs.

During the continuance of this mercantile business, Mr. J. Wright Boott became interested in manufacturing business also. He first made a considerable investment in the Boston Manufacturing Company, and afterwards went, largely, into the Lowell (then called Chelmsford) speculation. Early in 1826, he also went into the business of an iron foundry, in company with his brothers-in-law, Messrs. Lyman & Ralston. He embarked a very large sum in that, which was mostly, if not wholly, lost. The concern fell under great embarrassment. A ruinous failure was apprehended. In 1830 and 1831, Mr. J. Wright Boott found himself compelled to make disclosures of his affairs to one of his brothers and to Mr. John A. Lowell and myself ; and it then appeared, that he had no property whatever standing in his name as executor, or trustee ; that even the particular trust fund, formed in 1818, no longer existed as a separate and distinct fund ; that every thing in his hands stood in his own individual name, as if it were his own property ; and that the funds of the estate had been so mingled, indiscriminately, with his own, (if he had any, which could justly be called his own, after settling with his father's estate,) that, through his various operations in trade and speculation, always conducted in his own name, it had become impossible to say, at the time of these disclosures, what item of property, besides the store, was his own, and what, besides the mansion-house, was the estate's. But it also appeared, very clearly, that all the property he then held, of every description, was insufficient to meet his debts and liabilities, (including a debt of \$20,000 to certain wards, not of the immediate

family,) and to cover his mother's annuity fund. Had he been compelled, suddenly, to pay off these debts and liabilities, out of the family, it was plain that it could only have been done by appropriating to that use a large portion of the annuity fund, as well as all the present property of his brothers and sisters, beyond what had been paid to them ; and such was the disastrous state of his affairs, that there was even danger of a total loss of the family property.

The most valuable kind of property, he held, was a large amount of manufacturing stock. But, nearly the whole of this was pledged for large sums of money ; namely, a debt of \$30,000 to Mr. Lowell, and one of \$21,000 to Mr. Sturgis, as agent for Mr. Cushing. The residue was conveyed to me, in trust, to secure, in the first instance, the debt of \$20,000 to his wards, (for which the estate was liable,) and next to secure the estate. Means were taken to prevent a sacrifice of all this valuable stock, and to secure it to the estate, subject to these debts. His other assets were gradually reduced to money, and applied to the payment of the debts out of his own family. He was, thus, by degrees, extricated from the more pressing embarrassments ; but, whatever property of his own he might formerly have had, except certain reversionary interests, it was at that time lost ; and whatever remained in his hands belonged to the trusts of his father's estate, to which he admitted himself largely indebted, though no account was settled, by which the amount could be ascertained. His brothers and sisters, out of tenderness to him, voluntarily released, in 1833, all their claims, except on the reversions of the annuity funds. Through friendly arrangements, he was enabled to hold on to the manufacturing stock,—the whole of which was admitted to belong to him only in his capacity of executor, though subject to the private debts, for which he had pledged it. It yielded large income, and rose in value ; and by means of its income, and of the conversion of his other assets, these incumbrances were gradually lessened. At last, his debt, out of the family, became reduced to the single sum of \$25,000, due to Mr. Lowell, and secured by a large amount of the manufacturing stock.

The income from all the manufacturing stock, held either by himself, as executor, or in pledge by Mr. Lowell, was sufficient to keep down interest on the debt; to pay about \$5000 a year to his mother, who had removed to England; and to meet the expense of an establishment kept up at the family mansion. He engaged in no new business, and had no means of meeting these various expenditures, except the income of the manufacturing stock,—the whole of which stock was considered to have been purchased with the funds of the estate, and to belong to him only in his capacity of executor.

My general position, therefore, was, that a large amount of the property of the estate had, in fact, gone to the payment of Mr. J. Wright Boott's private debts, and had been lost by him in the business he had engaged in. Of this, no complaint ever was, or probably ever would have been, made by any of the heirs; but the fact is material in its bearing on the present controversy. I did not attribute this to any wrong intention whatever on his part; but to want of system in business, and of accuracy in accounts, and to the omission of proper settlements, and to singular obliquities of perception on the subjects of family property, and of the duties of a trust, in which none but his own family were concerned; and to other peculiarities of character, amounting, at last, in my judgement, to plain insanity. Circumstances had placed the affairs of the estate in a position, from which they could not be extricated, unless very gradually; and extreme tenderness and forbearance towards Mr. J. Wright Boott, on the part of every member of the family, who knew any thing of the facts, suffered the care of the property to remain in his hands for many years, during which he exhibited no disposition either to engage in new speculations, or to make changes of investment; and it so remained until new events arose, which dictated, in 1844, a different course of action.

His conduct had, for some time, betrayed evident symptoms of insanity, in my opinion, and in that of some others of the family. He had, besides, become completely estranged from many of them. In this state of the family relations, a

bargain had been made for a sale of the mansion-house, on terms satisfactory to all interested in it ; but deeds of confirmation were required from the heirs, to give the purchaser a good title. I refused, for one, and Mr. William Boott refused also, to execute such deeds, if the purchase money was to be left at Mr. J. Wright Boott's disposal and management,—it being understood that he intended to invest the proceeds, partly at least, in the purchase of an estate in the country, and the erection upon it of a house and green-house, for his own use ; which, as an investment of trust property, did not meet our approbation. The appointment of a new trustee thus became requisite ; and that involved a settlement of the executor's accounts at the Probate Office. Mr. John A. Lowell acted for Mr. Boott in the business. The debt of \$25,000 to Mr. Lowell was still unpaid, and he still held the manufacturing stock, which had been pledged for it. That stock I considered to be the property of the family, but pledged for Mr. J. Wright Boott's private debt, under such circumstances, as I then supposed, that no attempt ought to be made to prevent its application to the payment of Mr. Lowell. When, however, it became necessary to state an account of the executorship, instead of beginning with the position of the estate at the time of the release from the heirs in 1833, and placing the security for Mr. Lowell's debt on its true ground, an executor's account was prepared for Mr. Boott, by Mr. Lowell, in a form, which purported to be an account of the executorship from the beginning, and to exhibit, at the same time, an apparent balance of \$25,000, as due from the estate to the executor. Mr. Lowell, contemporaneously with the presenting of this account, reconveyed to Mr. Boott, in that capacity, the shares, which he had held in pledge. The account was extremely general, appearing to state certain supposed results, rather than to exhibit actual transactions in detail. It purported to account for capital, exclusive of real estate and chattels bequeathed to the widow, to the amount of about \$186,000 only. Of this, \$90,000 was claimed to have been distributed among the heirs, leaving a deficiency of

about \$4000, to be made up, in the fund for the support of Mrs. Boott. It exhibited, however, personal property on hand, amounting, at its cost, to \$119,000, from which, \$25,000 and upwards was claimed to be deducted, as being due to the executor personally.

I considered this a mere form, intended to provide for the payment of the debt to Mr. Lowell, without admitting, upon the face of the account, that the property of the family had been taken to pay it ; and I supposed the account to have been framed in the manner, in which it was framed, for the purpose of bringing out that apparent balance, so as to provide for the payment to Mr. Lowell, in the form most agreeable to Mr. Boott, and to give up, for the security of Mrs. Boott's annuity fund, all the property, that would still remain, after payment of that debt, which was the last remnant of the embarrassments of 1830. In that view, all proof of the account was waived, under an agreement of compromise,—the heirs executing the required deed of the mansion-house,—Mr. Boott resigning his trust,—a new trustee, satisfactory to all parties, being appointed,—and releases of all claims on Mr. Boott, either as executor or as trustee, being filed in the Probate Office, upon which, in lieu of other vouchers, the account was passed, as an account agreed to by all parties concerned.

Such is a very general outline of my former statement, omitting numerous details, to which I shall have occasion to advert, when they become material, in considering Mr. Lowell's "Reply."

The proofs, I exhibited, were chiefly of a documentary character. Little depended on my own unassisted memory,—Mr. Lowell, to the contrary, notwithstanding. I was particularly careful to distinguish between facts, stated as of my own knowledge, and mere inferences ; and when I stated inferences, I exhibited, *in extenso*, the evidence, from which they were drawn, so that my readers could judge, for themselves, how far they were warranted. If Mr. Lowell had followed that example, instead of dealing in round assertions, without showing his proofs, or showing only "choice ex-

tracts," instead of documents in full, (except in a few instances) it would have left him, comparatively, little ground to stand upon. But the ground, on which he stands, now, is so little, that I have no desire to make it less. I propose, only, to clear off the mystification, in which it has been enveloped, so that its true dimensions and character may be distinctly seen. In truth, nothing, in the foregoing statement, that is essential to the main question, has been, in the least degree, shaken by the "Reply." The statement will be found to require modification in some particulars ; but every new piece of evidence, which I have discovered, has tended to prove the loss and mismanagement more conclusively, and to indicate that they could hardly have been unknown to Mr. Lowell.

CHAPTER XVI.

MR. LOWELL'S PROOF OF MR. BOOTT'S GOOD MANAGEMENT. HIS PRETENCE THAT I HAVE NO RIGHT TO QUESTION THE ACCOUNTS.

The general question, forced upon me by Mr. Lowell, is, Did, or did not, Mr. J. Wright Boott mismanage the concerns entrusted to him as executor, trustee, and guardian, under his father's will ?

Mr. Lowell, as we have seen, undertook to testify, or state, in terms, or effect, to the coroner's jury, that my unfortunate brother-in-law had been *falsely* charged by me with mismanagement in those relations ; and he now undertakes to say, that this gentleman "was, in substance, whatever he might be in form, a *remarkably good* manager of trust property." [L. p. 97.]

To be sure, the particular proof, he adduces, is one of Mr. Boott's guardianship accounts, for a ward *not* belonging to

the immediate family. This is merely raising a new and false issue. It has nothing to do with the management of his father's estate, which is the whole matter in controversy. It serves, however, to draw aside the attention of the reader from the true question, and at the same time to give him a false impression of Mr. Boott's financial ability, by exhibiting, for his admiration, what Mr. Lowell calls "so brilliant a result," [L. p. 99.] in the building up, from a capital of \$12,500, one of \$27,600, after having appropriated about \$11,000 to the expenses of the ward. "If any one," says Mr. Lowell, "can point to a more successful administration of a trust fund, I should like much to see it." [L. p. 99.]

Now I have no disposition to go much into the particulars of this account, since it is not *the* account, with which my business lies. But, since Mr. Lowell puts it forward, in so triumphant a tone, as an uncommon example of excellent administration, I feel bound to point out a few facts concerning it.

I refer, for the evidence of them, to the account itself in the probate records, to Mr. Lowell's list of the property, [L. p. 99.] and to a second letter from Mr. John S. Tyler, respecting the amount of cash in the guardian's hands, which I shall by-and-by print. [*Post*, Ch. 24.] .

In the first place, the reader's admiration at the thing must be considerably abated, when he is told, that the period of accumulation was upwards of eighteen years, and when he reflects, that an ordinary six per cent. investment, of such a capital, if the income were added from year to year to the investment, and nothing were withdrawn for expenses, would, in that time, produce about \$37,000, instead of \$27,000, without any extraordinary skill in the manager. In the next place, it appears by the account, that the expenses of the ward, during the first ten years, averaged only about \$420 a year, and that the guardian charged nothing, for his own services and expenses in the business, during the whole term of the account. An excellent trust investment of the whole capital was made in the outset, it is true, by the purchase of U. S. stocks at a low price ; but, at that time, the father of

Mr. J. Wright Boott was associated with him in this guardianship, and doubtless directed that investment. Mr. J. Wright Boott, as surviving guardian, afterwards sold out these stocks, and a profit accrued, in consequence of their low cost, of about \$2000. The subsequent investments, made by Mr. J. Wright Boott, were all, except to the amount of about \$2500, embarked in the special risks of manufacturing and insurance. With these facts before us, we shall find no such astonishing proof of good management, in a fortunate result, aided by the omission of usual charges.

But what shall we say, when we further find, that, of the \$27,000 and upwards of property, delivered to the ward, in 1835, nearly \$9000 was *uninvested cash*? and that, of this uninvested sum, upwards of \$7000 was the *mere simple interest of moneys, which had been lying in the guardian's hands, for his own use, some ten or twelve years, to an amount almost equal to the original capital*? Does that prove good management? Or, is it an answer to say, that, as the event turned, the ward lost nothing by it?

True, Mr. Lowell informs us, that, "with respect to his having had *a part* of the money in his own hands, *at times*, paying interest therefor, I am authorized by Judge Loring, [the husband of this ward,] to state that the accounts were *annually* made up and submitted to *Mrs. F. Boott*, [her mother,] *the investments being explained and thoroughly understood and approved by her.*" [L. p. 99.]

Now, if Judge Loring has authorized these statements, in all their length and breadth, as matter within his personal knowledge, I shall certainly deem them to be unquestionable, although they must carry back his acquaintance with the dealings, between the mother and the guardian of his wife, to a somewhat early period; for the ward could have been only about three years old, when the guardianship began. But one cannot fail to remark, on inspecting the account, how little trouble it must have cost the guardian to *explain his investments*, during a pretty long series of years, within which, with a large sum of money to invest, there was scarcely a single investment made; and as for the thorough

understanding and approval of the accounts, by Mrs. F. Boott, unless she differs from most ladies in such matters, every man of business will be able to estimate the value of that. What does it mean, when we find large cash balances, for years, uninvested, except that she reposed absolute confidence in Mr. Boott's ability, as she well might in his intention, to do ample justice to his ward? What would she have thought, in 1830, when the uninvested moneys, lying in his hands, on this single account, with the simple interest upon them, amounted to over \$15,000, unsecured, except by his guardianship bond, had she been aware of the fact, and had she also known, that he was, at that time, actually insolvent, and without means of paying this debt, and like debts to her other children, except by taking for that purpose the property of his mother, and brothers and sisters? Would that have met her unqualified approval? Such was the fact, in 1830, as will presently be seen; and when he settled his accounts with these wards, in 1835, he was, then, enabled to pay them, in full, only by using property, which justly belonged to his father's estate.

I have already shown, [*Ante*, Ch. 6.] that it was no fault of Mr. J. Wright Boott, that this account did not exhibit a still more brilliant aspect. He would have swelled the \$27,600 of final property, by the addition of about \$4000 more, in compounding interest. I used the fact, formerly, to illustrate a characteristic peculiarity, which seemed to disenable him from perceiving, that, circumstanced as he was at the time of this settlement, generosity to his ward was injustice to others, more intimately dependant on him. The examination of this account, which Mr. Lowell has occasioned, by dragging it up as a specimen of such uncommonly judicious trusteeship, now leads me to observe another fact in it, which both illustrates further the sort of romantic sentiment, which Mr. Boott carried into these business transactions, and tends, at the same time, to throw more light on that increase of capital, which Mr. Lowell applauds so loudly. During the first four or five years of his guardianship, and before the great sale of stock in 1821, which placed

about \$12,000 in his hands, he not only charged nothing for services, but repeatedly *over-invested* on this account; that is, he chose, not only to give his services, but to use his own moneys, or the moneys of his father's estate, as the case may have been, to make up a good account for his ward. And yet, from 1821 forward, instead of over-investing, he so entirely changed his course, as to sell stock, held for this particular ward, to the amount of about \$12,000, and to make like sales for his other wards, and to keep the greater part of the proceeds, for his own use, uninvested, until the time of settlement was near at hand.

So much for the particular example, which Mr. Lowell chooses to produce, of Mr. Boott's excellent management and business-like habits as a trustee. It seems to me rather an unfortunate illustration; and the manner, in which Mr. Lowell treats it, upon a hasty glance at the result, without attending to facts, which become apparent upon examination of the account, and which, when seen, counteract his own object, affords another example of just such carelessness as he is so fond of imputing to me.

But another carelessness, less venial, lies in a prefatory remark, made by way of excuse for putting forward a supposed instance of good management so entirely foreign to the issue. He says, "I will take, in preference, [to the accounts directly in issue] another set of accounts, concerning which Mr. Brooks has charged him [Mr. Boott] with '*unfaithfulness.*'" [L. p. 98.]

This last word is marked by Mr. Lowell as a quotation; and though he makes no reference, it is plain that he intended to allude to a passage in one of my letters to Mr. Wells, (printed by Mr. Lowell, at p. 120) in which I spoke of his (Mr. Boott's) "unfaithfulness as a guardian and executor." Whoever reads that letter will see, that it relates to Mr. Boott's conduct towards his brothers and sisters only. It makes no allusion to wards, out of the immediate family. The unfaithfulness, spoken of, whether that was a proper term to use or not, applied, entirely, to his care of the family property. It was as the testamentary guardian of his broth-

ers and sisters, while under age, and as executor of his father's will, that, in a moment of just irritation, I described him as unfaithful. The whole context of the letter shows this so plainly, that I can hardly attribute Mr. Lowell's perversion of it to mere oversight. But, having, as he conceived, a very striking instance before him of successful execution of a trust, in the case of Mr. Boott's guardianship of certain children distantly related to him, he picks this phrase out of my letter, where it is applied to the guardianship of Mr. Boott's own brothers and sisters, and represents me as having applied it to the *very case* he is about to adduce. Why is this? Simply because he could not show a favourable example of guardianship, in the case of the brothers and sisters, as he thought he could, in the case of the cousins, to a very eminent degree; and, by making me characterize "so brilliant a result" as "unfaithfulness" of guardianship, he contrives to impress his reader with the belief, that my language was not merely harsh and uncalled for, but so utterly destitute of any reasonable foundation, as to indicate perverseness of mind and malignity of purpose. Is this fair dealing?

Had Mr. Boott shown such accounts, and made such settlements, with his brothers and sisters, producing a like accumulation of capital for them, I should never have dreamed, under any provocation, of calling his guardianship *unfaithful*; although, in view of the means, by which the result was accomplished, I might not have considered it the best proof in the world that he was "*a remarkably good manager of trust property.*" But, when we find, as we shall, that this very "brilliant result" was attained, for his other wards, at the expense of his brothers and sisters, every reader will begin to wonder where the proof of the good management lies.

Let us turn, then, to the accounts, which really are in issue.

Mr. Lowell's first and last position, in respect to the probate account, which he prepared for Mr. Boott, is, that I have no longer a right, either in law or in conscience, to question it, because it has once been settled and passed; and that, if

I do, most unconsciously, persist, notwithstanding, in denying its correctness, the burden is on me to prove what the account ought to be, and to establish, beyond question, each particular error. [L. pp. 37. 208.] I believe I shall have no difficulty in showing *enough* of error and of material omission, for all purposes of this inquiry ; and, although I may not be so fully and minutely possessed of all Mr. Boott's transactions, during the period of his executorship, as to be able to state an exact account myself, I am much mistaken if I do not show enough of error and omission to throw a considerable burden upon Mr. Lowell.

But, the argument is, that, if the account was settled, as I aver, upon a compromise, it was the basis of that compromise, that it should never, afterwards, be disputed. The passing of the account, it is said, was, " to Mr. Boott, a question of more than money ;—it was a question of life. And by every principle of honour, and humanity, and fair dealing, he was as much entitled to the benefit of the compromise, if compromise it were, at the bar of public opinion, and after his death, as when alive and claiming the final allowance of his account before a court of probate." [L. p. 208.]

This is fine declamation ; but the truth of the principle, it asserts, depends, entirely, on what the question is, and between what parties. If Mr. Lowell means to say, that I have no right to disturb the pecuniary settlement, or to go behind the account for the purpose of setting up a valuable claim, in the absence of any fraud, or essential mistake, shown in the account, or in the settlement, I should entirely agree with him, whether the account were passed on full proof, or by mere agreement without proof. But, if he means to say, that I have no right, in honour and fairness,—because that account was permitted to pass, without proof or question, upon a previous compromise,—to inquire, now, whether Mr. Boott managed his father's estate judiciously and profitably or otherwise, and to inquire, with reference to *that* question, what the account shows, and what it ought to have shown, I beg the reader to consider, how, and between whom, this issue has arisen.

The compromise, on the basis of that account, was a compromise between me and Mr. Lowell, he acting as the agent of Mr. Boott, and as a party directly interested in its settlement, so far, at least, as the payment of a large debt to himself was concerned, for trust moneys, that he had lent to Mr. Boott. If the settlement fairly imported, or implied, that no question was afterwards to be made about Mr. Boott's former management of his father's estate, it was a bargain that tied Mr. Lowell, as much as it tied me. Can he break the compact, when he pleases, and yet hold me in honour bound to silence? What happens? Without my knowledge, and without provocation, Mr. Lowell covertly gives out to a coroner's jury, and to others, that I had falsely charged Mr. Boott, in his life-time, with mismanagement of a trust, and that this account, prepared by Mr. Lowell, and exhibiting a balance in Mr. Boott's favour,—disputed by me, (so the statement went,) but allowed, nevertheless, by the judge of probate,—was a triumphant vindication of Mr. Boott, and positive proof that my charge was destitute of foundation;—and, by connecting this with other statements, he causes it to be believed, that Mr. Boott came to his death in consequence of that false charge and of other misconduct of mine, connected with it. Let the reader judge, then, whether I am not at liberty, or rather whether I am not bound, to prove, in my own justification, that the charge was true, this account to the contrary notwithstanding, and that I was compelled, by circumstances, to act as I did.

As between me and Mr. Lowell, where the present issue lies, the whole subject has been thrown open by his own act, in breach of the spirit of the compromise, as he himself states it. Not only so, but I insist further, that, as between him and me, the burden rests, not upon me to rectify this account, or to point out its errors with precision, but upon him to show its substantial correctness; since it was an account prepared by himself, as will presently appear, from materials and data in his own possession, quite inaccessible to me,—an account, which was never proved, nor supported by the exhibition of a single voucher, and one, which, he knows, I

never admitted to be a full and true account, but which, denying the apparent balance to be due, I suffered to pass, without proof or question, in the probate court, only upon the faith of a compromise out of court, which Mr. Lowell now disregards, and even repudiates.

Yes, Mr. Lowell has the boldness to deny, by implication at least, that there was any compromise in the case. "I do not know," he says, "what sort of a compromise that is, where one side gives up every thing and the other nothing—literally nothing; for, as to Mr. Boott's declining, as he did, to accept the trusteeship, I had said to Mr. Loring, before the accounts were presented at the probate office, that I should advise Mr. Boott, as soon as they were passed, to give up all charge of the property in order to avoid any future collision." [L. p. 206.]

Now, the compromise agreed upon, as I state it, was, that Mr. William Boott, and Mrs. Brooks and myself, would execute the required deed of the mansion-house, and would also execute a full release of all claims on Mr. Boott, and would permit his account to pass, without question or proof, provided he would resign his trust, and place the remaining funds, which his account admits, together with the proceeds of the mansion-house, in the hands of a new trustee, namely, C. G. Loring, Esq., in whom all parties had confidence. This, says Mr. Lowell, was no compromise, because "*I had said to Mr. Loring, before the accounts were presented at the probate office, that I should advise Mr. Boott, as soon as they were passed, to give up all charge of the property.*" What Mr. Lowell may have said to his own counsel, nobody knows but themselves. It is not pretended that such an idea had been communicated to me. And what does it amount to? Why, that, if and when the accounts should be passed, Mr. Lowell might, probably, unless he should alter his mind, advise Mr. Boott, as a friend, to retire from the trust. But does it follow that Mr. Boott, his account being passed, would have taken the advice? Is it certain, even, that Mr. Lowell would have urged it?

However this might have been, the question, then at issue, was, whether this account should be allowed by the parties interested, or not. On the part of myself and Mrs. Brooks and Mr. William Boott, knowing nothing of Mr. Lowell's secret intentions, or private conferences with his counsel, it was said, in effect,—“We have no faith in this account; we have no belief that it is possible for Mr. Boott to establish it; indeed, we feel confident that the balance claimed is not due;—but we also know, that Mr. Boott has no other present means to pay your debt, and that, under a former pledge, the property of the estate became, as we suppose, justly, though perhaps not legally, bound for it. We are, therefore, content, and will agree, to waive all objections, and forego all proofs, and take the account just as it stands, on the sole condition, that Mr. Boott shall surrender his trust, and pass over the property, which he admits, into other hands.” Mr. Lowell, thereupon, protesting his own belief that the account is all right, and that he can prove it, nevertheless agrees, that, if the opposition to it be withdrawn, Mr. Boott shall resign, and the property be passed over, as we require. Is not that a compromise? Is it not a compromise, by which we gain our point, as much as Mr. Boott, or Mr. Lowell, gains his? Is it the less a compromise, because Mr. Lowell secretly intended, all the while, to advise Mr. Boott to resign, even if his account should be contested and proved?

Fortunately, it is not left for Mr. Lowell and myself to settle this question on our respective statements; for we have the contemporaneous exposition of a disinterested party, through whom the bargain was made. I refer to Judge Warren, with whom, acting for me, Mr. Lowell held the interviews, which, he himself says, “are very fairly reported in the letter of that gentleman to Mr. Brooks.” [L. p. 34.] I printed that letter formerly, but only in an appendix. I now insert it in my text, Italicising, with Mr. Lowell's good leave, those parts, to which I desire to draw present attention:—

LETTER FROM C. H. WARREN TO E. BROOKS.

BOSTON, Dec. 19th, 1844.

DEAR SIR:—

In compliance with your request, I state to you, very briefly, the circumstances within my knowledge, relating to the *compromise*, recently made between the heirs of the late Mr. Boott.

On my return to the city, on Nov. 24, I saw you, for the first time, upon the subject of Mr. J. W. Boott's accounts as executor and trustee. You then entered into a full history of the circumstances of the estate, and the management of the property by the executor, with which you were very much dissatisfied. You handed me, at that time, a paper, prepared by yourself, and addressed to the Judge of Probate, setting forth the particulars, in which you thought Mr. B. had failed to discharge his duty as executor; which paper you proposed to file in the probate office. At the same interview, you disclaimed any imputation of moral delinquency, or fraudulent conduct on the part of Mr. B., and stated, that, *although you did not believe that the account presented by Mr. B. was correct, or that he had the means of presenting a correct account, still, you were not disposed to enter upon a rigid investigation of it, if the property, remaining in his hands, could be transferred to some other person, so that you could be certain that its future management would be such as to uphold the trust fund, and ensure a fulfilment of the wishes of the testator in regard to it.*

It seemed to me, upon reflection, that your views of the subject were such as admitted of an adjustment of a long-standing difficulty, in a manner honourable to all parties; and, from that time, I addressed myself to the accomplishment of that object.

I advised you not to file the paper, before referred to, in the probate office; as it might tend to excite further ill feeling, and would, perhaps, present an insuperable obstacle to a *compromise* between the parties. I then had a conversation with Mr. Loring, the counsel of Mr. B., and intimated to him, that I should be most happy in being instrumental in making an adjustment of the matter in controversy. He met my advances promptly, and asked me to have an interview with Mr. Lowell. Mr. Lowell, afterwards, called upon me, and, after a full and free conversation upon the subject, *I proposed to him to waive all examination of the account and its vouchers; that Mr. B. should resign his trust; and that the heirs, upon his doing so, should give him a release from all further claims upon him.*

At a subsequent time, I named Mr. C. G. Loring, as a gentleman, whose appointment would be perfectly satisfactory to yourself and Mr. W. Boott.

Mr. Lowell entertained the strongest belief, that the account presented by Mr. J. W. Boott was correct, and could be sustained throughout; and it would certainly be unjust to him, to say that his subsequent conduct in the matter was founded upon any distrust on that point. At least, he did not intimate any such distrust; nor did I put my proposition to him on any such ground.

The only motive, I presented, for the adoption of the proposed course, was, *the great desirableness of preventing any further difficulty in regard to pecuniary matters*, among the members of the family.

Mr. Lowell, after consultation with Mr. J. W. Boott, ACCEDED TO MY PROPOSITION; and as a consequence, Mr. B. has resigned the trust, Mr. Loring has been appointed trustee, and property to the amount of \$100,000 or more, besides the purchase-money of the house, (\$46,000,) has been transferred to him. The income of this goes to Mrs. Boott for her life, and, upon her death, the principal will be divided among the heirs. I should have stated that the amount, above-named, is subject to the payment of about \$18,000 to Mr. J. W. Boott, —the balance claimed as due to him on the account, after deducting dividends on Merrimack stock, received by him after the rendition of the account.

The release was then executed by yourself, Mrs. Brooks, and Mr. W. Boott; and thus the whole matter was settled. *No party appeared in the probate court to question Mr. J. W. Boott's account; and, so far as I heard, no examination of vouchers has been had, or sought.* I will only state further, that, upon the facts stated to me, I did advise you to withhold your signatures to the deed of the house, until all matters in controversy were adjusted.

In my view of the matter, NO CONCESSION has been made by either party as to the CORRECTNESS OR INCORRECTNESS OF THE ACCOUNT presented in the probate office; but, there being no imputation of fraud, the COMPROMISE has been effected UPON A BASIS WHOLLY IRRESPECTIVE OF THAT QUESTION.

I am, very truly, yours,

C. H. WARREN.

EDWARD BROOKS, Esq., Boston.

Is it not amazing, that, in the face of this report of the facts, admitted by Mr. Lowell to be a fair one, he should venture to suggest, that there was *no compromise*, because he had once privately said to his own counsel, (withholding the fact from me and from my counsel,) that, when the accounts should be passed, he intended to advise Mr. Boott to surrender his trust,—and, therefore, that it was a case, in which one party gave up every thing, and the other literally nothing? Mr. Lowell may thus prove that he got the better of me in a bargain, by pretending to yield a point, which he never intended to stand upon; but that cannot disprove the fact, that there *was* a bargain, and one, which I thought, and which he represented, to be mutually advantageous, and mutually concessive.

In respect to the correctness of the account, it appears,

however, by Judge Warren's statement, that the question was simply withdrawn and waived by mutual consent, under a certain agreement, entered into for the sake of an amicable family settlement, intended to avoid that question, which remained an open one, though each party retired from the threatened contest, expressing full confidence, real or feigned, in his own ability to secure the victory, if he had chosen to pursue it. Mr. Lowell says, the understanding was, that this question should never be agitated again. Granted:—Yet he, in plain violation of that understanding, raises this very question anew, when he cites *this same account* against me, as a thing foreclosed, in *proof* that I had *falsely charged* with mismanagement the party, in whose behalf it was stated. In doing so, does he not place the *truth* of the account, for every purpose except that of the actual pecuniary settlement, which adopted it as a basis of compromise “irrespective of that question,” precisely where it was? The burden, I submit to the reader, in reference to this new issue, fairly stands just where it originally stood. The passing of the account, without proof, by agreement for a particular purpose, bound nobody to it except for that purpose. For every other, the paper is neither an admitted account, nor an account proved; but the party, who now produces and relies upon it, for a new and collateral purpose, is bound to produce the proofs and vouchers in his own possession, just as the executor would have been, upon contest in the probate court. “Such is the decision of law, of equity, and of common sense.” [L. p. 37.]

Nor does it make any difference that the party, who provokes the question, is not the nominal party, who presented the account; or that this nominal party is no longer alive to argue it. All the extrinsic proofs, which he then had, were, and are, we shall find, in Mr. Lowell's possession, or control; and although Mr. Lowell says, while urging this ground of defence, that he is “not possessed of his [Mr. Boott's] familiarity with the facts,” [L. p. 37.] yet, it will be seen, that, whenever it becomes necessary to interpose an explanation, he assumes, without scruple, to know all about them; and

that, in truth, the advantage, as between him and me, on every point relating to the accounts, is, in respect both to knowledge and means of knowledge, altogether on his side. In point of honour and fair dealing, then, Mr. Lowell can never be allowed to protect himself from inquiry, by setting up the merely technical notion that I am estopped from questioning the truth of this account; nor to relieve himself from the production of his vouchers, by denying the compromise, and suggesting that a *pro forma* allowance of the account in the probate office has shifted the burden of proof; nor to escape, from a dilemma of his own creation, by pretending that the death of Mr. Boott has put it out of *his* power to explain. All this should have been thought of before he ventured to set up this account against me, as proof that I had made false accusations; and I now challenge him to show, that it is, what he says it is, a triumphant vindication of Mr. Boott's character as a trustee, and proof of his good management of his father's estate,—which point, necessarily, involves the accuracy and completeness of the account itself.

CHAPTER XVII.

THE ACCOUNT. ITS EXTREME GENERALITY. WANT OF BOOKS AND VOUCHERS.

This account, though once printed by me, and once by Mr. Lowell, in full, [B. App. p. 43.—L. p. 38.] must be exhibited anew, at least in its principal statements. But that is soon done. For, laying aside the amount of the inventory, which consisted entirely, as before shown, of real estate and a small amount of chattels, specifically bequeathed to the widow, and laying aside some small items of gain and loss in sales, resulting in a balance of \$133 61 only, and also

a few minute items of expense for probate fees, amounting in the aggregate to \$23 only, the *whole* account consists of *three* items of debit, and *two* of credit, as follows:—

JOHN WRIGHT BOOTT, EXECUTOR OF KIRK BOOTT.

Dr.

1. "Cash received from the firm of Kirk Boott & Sons, in part of the testator's interest in that copartnership, and invested in stocks to constitute the trust fund, as by his [the executor's] account settled at a probate court, May 11, 1818,"	\$116,783 95
2. "Cash received of Boott & Lowell, in liquidation of the outstanding property of Kirk Boott & Sons,"	69,389 99
	—————
3. "Income received on the trust fund for the widow, from March, 1818, to Nov. 1844,"	186,173 94
	274,686 36
	—————
	460,860 30

Cr.

1. "Cash paid to the heirs, nine in number, \$10,000 each,"	90,000 00
2. "Income paid to, or for account, and by order of, the widow,"	274,686 36
	—————
"Leaving in his [the executor's] hands to be accounted for,"	364,686 36
	—————
	96,173 94

The small items, mentioned above, namely, \$133 61 on the debit side, and \$23 on the credit side, add to this balance (\$133 61 less \$23,) Making the actual cash balance, according to the account,	110 61
	—————

The amount of the inventory is also charged on the debit side, viz.	36,984 75
But all the items in it, except the mansion-house, are also entered on the credit side, and they amount to	12,984 75
	—————

The difference is	24,000 00
This remains charged on the debit side of the account, and represents the appraised value of the mansion-house; which was not property in the executor's hands, and is, as Mr. Lowell admits, immaterial	

<i>Brought over,</i>	\$96,284 55
to our discussion. [L. p. 39.] I add this to the above balance, only that the reader may see its conformity to the nominal balance of the account, as print- ed both by me, and by Mr. Lowell,	<u>24,000 00</u>

which is

The account then goes on to say:—

“To meet which he [the executor] has the
following property:

39 shares in the Boston Manufacturing
Co.—

Of 18 shares cost \$1150 each, \$20,700 00
Of 21 shares cost \$1300 each, 27,300 00

_____ 48,000 00

71 shares in the Merrimack Manufacturing
Co. at cost,

71,000 00

Mansion-house in Bowdoin Square, 24,000 00

Stable in Bowdoin-street, deeded to exec-
utor by J. W. Boott, in 1831,

2,500 00

Less cash balance due to the executor,”

_____ 145,500 00

25,215 45

[See the account, B. App. p. 43, and L. p. 38.]

_____ 120,284 55

Since the mansion-house represents nothing in the execu-
tor's hands, or for which he was accountable, it seems to be
agreed, by Mr. Lowell and myself, that it may be deducted
both from the debit side of the account, and from the mem-
orandum of property at its foot.

The balance of the account will then stand, as above stated,
at

\$96,284 55

The items of property above enumerated,

amount to 145,500 00

Deduct the mansion-house, here also, 24,000 00

_____ 121,500 00

“Less cash balance due to the executor,”

25,215 45

_____ 96,284 55

This is the *entire* account, with the exceptions, I have men-
tioned, of a number of items, which make a *show* of something,
and come to nothing. There are no schedules annexed, or

referred to, of the particular receipts, or payments, which go to make up the large sums spoken of; and there are no dates whatever, except the date of the inventory, and of the settlement of the former probate account, and the date, under which this present account was rendered. Three fifths of the account consist of the income, which is both debited and credited *in mass*. It stands, equally, on each side, and does not affect the final balance. Laying aside this aggregate of income, for the purpose of looking at the components of the final result stated, the account may be still further simplified, and may be stated in round numbers, as follows:

JOHN WRIGHT BOOTT, AS EXECUTOR OF KIRK BOOTT.

DR.

1. For cash received from the old firm of Kirk Boott & Sons, before May 11, 1818, and invested by him in stocks to constitute the trust fund, as by his probate account settled at that date,	\$116,700 00
2. For cash received from Boott & Lowell, in liquidation of the property of Kirk Boott & Sons,	69,300 00
	—————
	186,000 00

CR.

3. For cash paid to the nine heirs, \$10,000 each,	90,000 00
"Leaving in his hands to be accounted for," "To meet which he has,"—i. e. the executor has, in his capacity of executor,— 39 shares of the Boston Manufacturing Co. which cost	\$48,000 00
71 shares of the Merrimack Manufacturing Co., which cost	71,000 00
And a stable, conveyed, in 1831, by J. W. Boott, personally, to himself as executor, at	2,500 00
	—————
"Less cash balance due to the executor,"	121,500 00
	25,500 00
	—————
	\$96,000 00

Add to this the \$275,000 of income said to have been received in the aggregate, and said to have been paid in the aggregate, and the reader has before him the *whole substance*

of that, which Mr. Lowell avers to be a full, complete, and accurate account of Mr. Boott's twenty-seven years of executorship!

I stated, formerly, three classes of objections to this paper:—
 1. Such as arise upon its face, or in connexion with the will, inventory, and probate papers. 2. Such as appeared by comparing it with facts, not of record, but positively known to me, and of which I stated the evidence. 3. Such as are found by comparing it with other probable facts, which I did not pretend to have positive knowledge of, but put forward as reasonable inferences from certain evidence, which I stated, leaving it to the other party, on whom the burden of explaining and proving this part of the case properly lay, to show, if he could, that my inferences were not well founded.

The tendency of all these objections was, to show that the account could not be accepted, as a complete and accurate exhibition of all the transactions, nor even of the results of all the transactions, of the period, to which it relates; and that no such balance, as it claims, really belonged to Mr. Boott.

Mr. Lowell has attempted an answer;—with what success let us now see.

In the first place, on the face of the paper I objected, that this was *no account*, but a mere general statement of supposed results; and such as gives no opportunity to an interested party, by the particulars of sums and dates, to test their correctness, or to trace the property through the various uses, which may have been made of it, to its final shape; —and consequently, that it is impossible to ascertain, from the face of the paper, even if such facts as are stated in it be literally and strictly true, whether the executor has, upon that hypothesis, charged himself with *all* he was properly chargeable for, or not. Is not this so?

By such a paper, Mr. Lowell, who prepared it, in effect, merely says,—“The executor received, more than twenty-six years ago, a sum of \$116,700 from the old firm of Kirk Boott & Sons, on account of the estate's interest in that firm, as appeared by his account at that time, in which he charged

himself with certain stocks, to that amount, purchased for the annuity funds, directed by the will. At some time after,—but when, how, and to whom, I leave you to guess,—he sold all those stocks ; some at a loss and some at a gain ; but he gained, in the whole, \$133 61 by the sale, and this I now charge him with. What he did with that \$117,000, (the proceeds of the sale,) from that day to this, I do not state ; but you will see, at the end of this account, what property now stands in his name as executor.”

“At another time, but when, or how, I cannot tell, he received another large sum, viz. \$69,300, from another firm, called Boott & Lowell, which sum I consider as belonging to the estate, and charge accordingly. How Boott & Lowell came to have it, or what the estate had to do with that firm, is not for you to know ; nor does the executor undertake to say, that this was the final result of the liquidation of the whole estate ; it is enough for him to *say*, that the sum, I speak of, was received in liquidation, total or partial, as the case may be, of some outstanding property of the old firm of Kirk Boott & Sons, for which Boott & Lowell had become accountable.”

“At some or other times, the executor paid \$10,000, in cash, to each of the heirs, making \$90,000 ; and this, subtracted from the receipts above mentioned, leaves \$96,000.”

“He also received, in the way of interest and income upon all the sums and all the items of property, that have ever been in his hands, during, or within, these seven and twenty years, say \$275,000 ; but there is no use in telling when, or in what sums, or what particular property it all came from ; because I assure you, that, at some time or other, he paid it all away again, ‘to, for account, or by order of, the widow.’”

“He now has on hand, to show for his investments, one hundred and ten shares in the Boston and Merrimack manufacturing companies, all standing in his name as executor, which cost \$119,000, and a stable, which he sold to himself as executor, in 1831, for \$2500, as his deed will show. How he came to hold so much property in this capacity is

immortal; for you will be pleased to observe, that the estate owes him, personally, a cash balance of more than \$25,000. How that arose it is unnecessary to explain; for you must perceive, that, if you take that sum out of my valuation of all the property held by him as executor, it will leave just \$96,000, and that will exactly balance this account." Q. E. D.

I submit to the reader, whether this is not a perfectly fair translation, into common language, of all the statements of this paper, (leaving out the real estate and specific bequests as immaterial,) and whether these statements embrace the ordinary characteristics of a trustee's account, or of an account sufficient for any business purpose whatever.

Mr. Lowell has not condescended to furnish the slightest answer to this complaint of extreme generality and looseness. Indeed, how could he? The thing is apparent; and there can be no good answer to it, except inability to state a better account.

I attributed these defects, formerly, to the fact, that Mr. Boott had *kept* no accounts for more than twenty years, if he ever did, either with the estate as a whole, or with the particular trust funds, which he was bound to set apart and distinguish, or with the individual heirs, or with the annuitants; and that, with few exceptions, he had kept no vouchers for any thing.

Was not this true? Mr. Lowell, with some faint attempts to *intimate* the contrary, does not venture any positive assertion on the subject one way or the other; and, upon the whole, this allegation must stand as tacitly admitted by his "Reply." Indeed, in one place, he says, he stated to Judge Warren, "the deficiency of books and papers on Mr. Boott's part, so far as related to the *earlier* transactions;" [L. p. 35.] which statement might, with equal propriety, have been extended to the *latest* of them, except such as may have passed through Mr. Lowell's own hands, and may therefore appear in *his* books.

He further says, that he offered to exhibit to Judge Warren, if he would appoint a time of meeting, at Mr. Lowell's

office, "all the documents from which the accounts had been made up." [L. p. 35.]

This offer I never before heard of; and Judge Warren states no such fact in his letter;—although he does state the great confidence in this account expressed by Mr. Lowell,—than which, I am sure, nothing can be more probable. But such an examination of vouchers, Mr. Lowell says, "Judge Warren considered to be unnecessary;" [L. p. 35.] as, of course, it was, under the proposal, then made, for a settlement on terms of compromise, which superseded all investigation. But what were "all the documents" then offered? Why does not Mr. Lowell produce them now?—now that the question of the account, then waived, has arisen, and has become a subject of serious controversy? How happens it, that he does not show a *single one* of these "documents," from which, he says, "the accounts had been made up?" If they were such as would positively prove the account in question, or any part of it, without at the same time contradicting other parts, or if they were such as would remove a single objection, without starting new ones, I think we may safely assume, that he would not have omitted them in a "Reply," designed to overwhelm his adversary. Indeed, since his professed object is to vindicate the memory of a friend, if he possessed such convincing proofs of the reality and justice of this account, as his supposed offer to Judge Warren would seem to intimate, I do not see how, in justice to that friend, he could have persuaded himself to withhold them from the pages of his "Reply."

When he has a document, which he thinks clear to his point, does he ever fail to produce it? When he has not, he contents himself with bold statement, on the weight of his own authority.

One document, which he does produce for a different purpose, incidentally proves that, which I assert, respecting the total want of usual account books and vouchers. It is the letter of Charles G. Loring, Esq., used by Mr. Lowell as evidence on the question of insanity, but which speaks, by the way, of "the pressure of the circumstances, in which he

[Mr. Boott] was placed, by his *inability* to render *detailed accounts.*" [L. p. 157.] So, the fact, that he, habitually, neglected the rendering and settling of accounts, is proved, by implication, in respect to transactions with the principal annuitant, under which head the account in question purports to cover near \$275,000 of receipts, and an equal amount of payments. The proof is, a document formerly printed by me,—namely, Mrs. Boott's Release, (executed, in London, before this, or any other, account was stated,) which recites, that, "by reason of the unlimited confidence always existing between us, the settlement of periodical accounts has not been thought necessary." [B. App. p. 38.]

Mr. Lowell, it is true, in one passage, ventures to assert, inferentially, that Mr. Boott had detailed accounts in 1826. He refers to a passage in a letter from Mr. Kirk Boott, printed by me, in which, under the date of February 8, 1826, that gentleman says of his brother; "as he is *preparing to settle the estate and pay over the balances*, it is incumbent on me to come to a settlement with him." [B. App. p. 15.]

Mr. Lowell's remark on that is,—"He therefore *had accounts* at that time." [L. p. 98.]

Not feeling, myself, the force of that logic, I beg to ask, if he had books of account, or detailed accounts drawn out on paper, in 1826, what became of them? No loss, either of books or papers, is pretended after that date. Mr. Lowell, indeed, makes a general assertion, in another place, that "documents necessary to enable him to state *all* the particulars of his accounts had been lost or destroyed;" [L. p. 58] but, unluckily, he refers, in a note, to the particular occasion, on which he supposes such a loss to have arisen, and says, it was by the burning of "the books of Boott & Pratt, and of both firms of Kirk Boott & Sons," in a fire, which destroyed Mr. Boott's store. Now when did this happen? Why, he himself tells us, it was "in April 1825," and, he believes, "did not apply to his papers and memorandums,"—some of which, he well remembers, "were in the iron safe and were saved, though much discoloured." But he adds,

"the loss of the original *books*, will, however, account for Mr. Boott's inability to *replace* any *papers* lost or mislaid." [L. p. 59.] This is another conclusion, which does not seem to me very logical. But, at any rate, a fire in April, 1825, could not have consumed the accounts, which Mr. Lowell supposes Mr. Boott to have had in February, 1826; and I ask, again, what became of them?

Mr. Lowell can only venture to intimate, that they *may* have been *voluntarily destroyed* by Mr. Boott himself; or, at least, that no pains could, or should, have been taken to preserve them, *since they were useless*, after the *release* obtained from the heirs, in 1833. [L. pp. 31. 59.]

Is that likely? What *motive* does the release afford for destroying or neglecting papers, which, if Mr. Lowell is right in his view of the accounts, would have clearly proved,—*not* that Mr. Boott was *indebted to the other heirs* at the time of that release, but—that *they were indebted to him*?—and that a large amount of property, held by or for him, *apparently as executor, really belonged to himself in his private capacity*, and always had? Did a release from the heirs of *their* claims on *him* supersede the evidence, by the supposed accounts, of *his* claims on *them*, or on the property apparently theirs? The supposition is not merely in itself without proof or likelihood, but, when connected with the account now in question, and with Mr. Lowell's other hypotheses, it becomes absurd. If Mr. Boott had purposely destroyed his accounts, upon the ground that they were *superseded* by a release, it would be the best evidence in the world that they had exhibited a balance *against* him, which the release discharged, and the best evidence in the world that the account, now in question, cannot exhibit the true result of all his transactions as executor.

But all these suggestions of loss and destruction are merely frivolous. It is plain, from such a statement, that no accounts were *kept by the executor*,—no vouchers, ordinarily, taken. Besides, if they had formerly existed, but had been lost or destroyed, either accidentally or purposely, I should be glad to know what were "all the documents, from which the

accounts had been made up," which Mr. Lowell says he offered to show to Judge Warren in 1844? And further, if the books of Kirk Boott & Sons were destroyed by the fire of 1825, there is no pretence that any such calamity has befallen the books of Boott & Lowell. Why does not the account give us the particulars of the executor's transactions, so far as they appear in those books? Those books will be found, presently, to have embraced a very interesting period in the history of Mr. Boott's investments, and, it would seem, that they embraced, also, a record of all his cash dealings, whether for the estate's account, or his own, within that period. Why are we not furnished with those particulars? Why are we told nothing from those books, except that, at some dateless time, the firm of Boott & Lowell paid over to the executor the very precise sum of \$69,389 99?

Certain it is, that no account had ever been filed in the probate court, except that of 1818, admitted to have been a partial account, intended to cover only particular trust funds, and not to disclose the final interest of the heirs. Certain it is, that the business of the old firm, in which the estate was a partner, was required to terminate in March, 1818, and must have been finally wound up, and its results ascertained, within a few years after. Certain it is, that those results had never been stated in a *probate* account. Records prove that. I aver that they had never been stated in any *private* account, rendered to the heirs. Mr. Lowell does not pretend to deny the truth of that averment. I asserted, formerly, that there never was a final settlement with any one heir, nor any payment made as a final payment,—none, at least, founded upon so small a sum as \$10,000. No evidence to the contrary is produced by Mr. Lowell; nor does he venture, directly, to contradict the assertion. It is also now plain, that, except such accounts as may have been kept for their own business, and for Mr. Boott, by the mercantile firms, with which Mr. Boott was connected, the last of them terminating in 1824, no accounts, formal or informal, of the business of the estate, had been kept, and that no vouchers relating to it had been usually taken. It is equally plain, from the face of the paper,

which I now comment on, and from Mr. Loring's statement, that, in 1844, when it had become necessary for Mr. Boott to show something, that might answer for a discharge from his trust, he was utterly unable to exhibit a proper and intelligible account, detailed or otherwise, of his transactions with, or for, the estate and its trust funds, from his neglect in keeping proper accounts and taking proper vouchers.

Now what is the question?—Whether Mr. Boott had shown himself a competent and suitable trustee of this property, or not; and I submit to every candid reader, that,—considering the nature, magnitude and amount of the transactions; the length of time, through which they had run; the number of persons interested; the complex relations, in which Mr. Boott stood as surviving partner, executor, trustee, and guardian; the necessary ignorance of women, minors, persons out of the country, persons not in business, and persons nowise connected with the several firms, concerning the real transactions of a remote period;—the total neglect and omission to settle, render, or keep, accounts, and usual documentary evidence, of complicated pecuniary transactions, and the consequent inability to make, at last, any more satisfactory statement of them than the paper offered, in 1844, as a probate account, running back to the time of the death of the testator in 1817, are conclusive evidence of unfitness for the trust, even if there were nothing else in the case. And we cannot but remark, that Mr. Lowell harms, instead of helping, his cause, when he undertakes to show, that, during a large part of the same period, Mr. Boott kept and rendered detailed accounts of his dealings as guardian of persons not of his own family,—explaining to the mother of his wards, annually, as is stated, the true posture of *their* affairs, and building up for *them*, what Mr. Lowell esteems, a successful and brilliant result. Does not this fact tend to prove the existence of that idiosyncracy, attributed by me to Mr. Boott, which led him to look upon the property of *his own family* in a very different light from that of others in his hands, and to fancy that he had a *right* to deal with it as his own?

I do not mean to overlook, in these suggestions, the embarrassment, which might well have arisen from the destruction of the books of the two firms of Kirk Boott & Sons, if they were destroyed in 1825. But, would any trustee, of ordinary prudence and discretion, and of proper business habits, who had lost his books of account by such a casualty, have failed, either immediately to open new ones, and to record therein a statement, as exact, as circumstances would permit, of the then condition of the trust property in his hands, and to keep accurate accounts of it thenceforward,—or else to settle periodical accounts in the probate office, which might have dispensed with the necessity of books? If we had, now, an exact statement of affairs as they stood immediately after the fire in 1825, (long before which time the business of the old firm must have been wound up,) and proper accounts *after that*, how much of this discussion and how much of embittered controversy would have become superfluous, if not impossible !

CHAPTER XVIII.

THE ACCOUNT. MR. LOWELL'S DISCOVERY THAT IT CLAIMS ONLY
\$3700, INSTEAD OF \$25,000.

To return to the face of the account. I formerly remarked upon it, as follows:

"The paper states in effect this—that all the *money*, which originally came to the hands of the executor, for investment, or distribution, as *capital*, belonging to the estate, was only about \$186,000 out of which he had distributed among the heirs, 90,000

leaving only of the capital invested, or to be invested, 96,000
That all the *income* he had ever received on this capital had been
paid over "to, or for account, and by order of, the widow;" so that

he had only to account, further, for the \$96,000 of *undistributed capital*. But the account then goes on to state, that, at the date of its rendition, he holds, in his capacity of executor and trustee, (besides the mansion-house,) property representing his own investments, as executor, to the amount of \$121,500
and, since the undistributed capital, which remained, was
only 96,000

that he had invested, as executor, *more than there was*, by \$25,500 and consequently, that the estate *owes him that money*, less some small items, which reduce it to the exact sum of \$25,215 45." [B. p. 101.]

"This," I said further, "is certainly a very extraordinary statement, if true ; and, if it does not prove insanity, must at least be set down for proof of mismanagement." [B. p. 101.]

That I now repeat ; and couple with it the further remark, that Mr. Lowell's answer to it is one of the boldest pieces of sophistry and fiction, that I ever saw put forth in print ; though, like all other sophistry and fiction, it has, of course, some verisimilitude, and some degree of plausibility, to make it imposing.

According to the declaration of one of the jurors, (Dr. Palmer) Mr. Lowell stated, at the inquest, "that Mr. Boott had a great aversion to figures, and to making out accounts ; and that he [Mr. Lowell] made out his accounts for him ; and on completing his accounts, he *discovered* that, instead of Mr. Boott being indebted to the estate, the estate was debtor to him in the sum of \$25,000." [B. p. 28.] But Mr. Lowell has, now, entirely eclipsed the brilliancy of that former discovery, by a new one. He has recently *discovered* that Mr. Boott never pretended to claim a *debt* of \$25,000, but only one of \$3700,—as, he says, the account shows. He devotes some space to this subject, and his concluding language is, "All then that Mr. Boott *ever claimed* (Mr. Brooks, Mr. William Boott, and their learned counsel to the contrary notwithstanding,) was, that he had overpaid the heirs, \$3700, and not, as they allege and doubtless believe, \$25,000." [L. p. 40.] This, in a certain sense, which looks to the mere personal obligation of the heirs, or of some of them, arising out of an over-payment, and according to one form of analyzing the account, for the purpose of extracting

the amount of that personal obligation, may be argumentatively, true ;—but the idea, intended to be conveyed, is not true, according to the natural and apparent sense of the external statements of the probate paper. Neither is it true, *as matter of substance*, that Mr. Boott did not *claim*, by this account, or rather that Mr. Lowell did not claim for him, \$25,000 of the *estate's property*, as *due*, or *belonging to*, himself. This I hope to make clear.

In the passage above extracted, I was commenting upon the mere *face* of the paper, and pointing out its palpable absurdity, as an actual account of the whole executorship from beginning to end, which it pretends to be. In that view, I spoke of it as indicating that the executor claimed to have invested more than there was, on his own showing, to invest, by \$25,000, and as claiming, in consequence, \$25,000 to be due to himself.

Did I, in this, either misstate, or overstate, the fair effect of its language? What else is the natural meaning of the declaration, that he (the executor) holds property to the amount of
\$145,000.00
or, deducting the mansion-house at
24,000 00

personal property, and a stable, to the amount of 121,500 00
“*less cash balance due to the executor,*” 25,215 45
following, as this does, the statement of certain receipts and certain payments, which, if true and complete on both sides, left \$96,000 only of funds for investment, instead of \$121,500?

Does it mean that Mr. J. Wright Boott has, or holds, *in his own right*, \$121,500 of property, in corporate shares and a stable, by way of showing that he is *able to respond* for a balance of \$96,000? Certainly not. Mr. Lowell does not pretend this. It is the accounting party, who speaks,—the executor, as such,—and says, that he, *virtute officii*, holds that property. He shows, too, that he well understands the distinction; for, a part of that property,—the stable,—he describes as having been formerly conveyed from J. W. Boott, as a private person, to the executor, as an official;—and, if we look *out of the account*, to the *fact*, we find that, not only the sta-

ble, but the shares of manufacturing stock, were, really, at or before the time of accounting, conveyed *to him as executor*, and that the same were conveyed *by him*, to his successor in the trust, *as property of the estate*; and when the paper takes, by deduction from the aggregate amount of that property, a certain sum, under the words, "less cash balance due to the executor," what does it assert, but that the sum, so taken out, is a cash balance due to him, constituting a charge upon the whole property, and that *the estate*, or, which is the same thing, *the property of the estate*, *owes* him that amount of money?

Mr. Lowell, however, finds a recondite meaning in all this, which he explains to be, that so much of Mr. Boott's *private property* had happened, by circumstances, which he narrates, and which I shall presently deal with, to be placed *erroneously* in his name as *executor*;—property, which had been pledged to Mr. Lowell for a debt of \$25,000, and which he had himself, in 1844, reconveyed to Mr. Boott *as executor*, in consequence of an arrangement made *with me*, in 1831, presently to be spoken of. He says, that this "cash balance, [of the account,] is merely *a specification of his* [Mr. Boott's] *debt to me*, [Mr. Lowell] which had become mixed up with his account as *executor*, in consequence of the interference of Mr. Brooks in 1831." [L. p. 43.] A very singular mode, certainly, this, of specifying a private debt of \$25,000 *from* Mr. Boott *to* Mr. Lowell, to call it "a cash balance due to the *executor*," *from* the estate, or property, he is accounting for! The remark, however, serves at least to show that I was right in my supposition, when I first saw the account, as heretofore stated, that it was framed,—as it *was* framed,—with a view to provide for Mr. Boott the means of paying that debt to Mr. Lowell, without admitting and recording the fact, that the property of the estate was taken to pay it with. The *final cause* of this "cash balance," is, as I rightly conjectured, *Mr. Lowell's debt*. We are no longer left in doubt on this point; for Mr. Lowell informs us, that

"This form of presenting the account was adopted by the advice of Mr. Loring. It was that gentleman's opinion, that, as part of the as-

sets, although not belonging to the estate, did, nevertheless, stand in Mr. Boott's name as *executor*, it was proper and necessary, that they should be introduced into the account, to prevent question or confusion hereafter; and that, therefore, Mr. Boott should *claim the difference*, as a balance *due to him*, which he could at once apply to THE PAYMENT OF HIS DEBT TO ME." [L. p. 42.]

Now I doubt not that my friend Mr. Loring, being professionally consulted, may, upon such a statement of facts as was presented to him, have advised this, or some such form, as the best means to effect the twofold object sought by his clients,—namely, to provide at once for Mr. Lowell's debt, and for the protection of Mr. Boott's reputation as a trustee. But, if the object was, "to prevent question or confusion hereafter," and at the same time to show that Mr. Boott designed, by that account, to claim a debt of \$3700 only, instead of \$25,000, as Mr. Lowell has lately discovered, or to make, upon the face of the account, "a specification" of the fact, that Mr. Boott owed Mr. Lowell \$25,000, and of the alleged facts, that the heirs of the estate owed Mr. Boott \$3700, and that some of the property, that stood in his name as executor, never in fact belonged to the estate, but was always his own, and that this property of his was to pay Mr. Lowell,—I think that this learned and upright lawyer, who, scorning all indirection and coverture, habitually means what he says, and knows, preeminently well, how to say what he means, would have found language more competent to express these various matters than the dark and mystical language of this account,—which seems admirably adapted to hide every one of them, or, like an ancient oracle, to speak in any sense, that the after occasion might require.

Did that gentleman, (Mr. Loring,) understand, at the time he was consulted upon this account, that Mr. Boott was claiming \$3700 only, instead of \$25,000? Did Mr. Lowell himself so understand it? If he did, it is very strange that he should never have expressed such an understanding of it till his book came out. How stands the evidence on this point,—as to the understanding all round? In the first place, what says the paper? "Cash balance *due to the executor*, \$25,215 45." That seems, *prima facie*, plain enough.

In the next place, Judge Warren, that fair reporter of the settlement, what says he?

"Mr. Lowell, after consultation with Mr. J. W. Boott, acceded to my proposition; and as a consequence, Mr. B. has resigned the trust, Mr. Loring has been appointed trustee, and property to the amount of \$100,000 or more, besides the purchase money of the house, (\$46,000) has been transferred to him. The income of this goes to Mrs. Boott for her life, and upon her death the principal will be divided among the heirs. I should have stated that the amount above-named is *subject to the payment* of about \$18,000 to Mr. J. W. Boott, *the balance claimed as due to him on the account*, after *deducting* dividends on Merrimack stock, *received by him AFTER the rendition of the account.*" [Ante p. 139.]

On turning to the *after* account, settled by Mr. Boott, December 23, 1844, (the day of the completion of the arrangement,) we find the executor charging himself with sums received after November 18, (the date of the account now in question,) and that the amount of the Merrimack dividends, referred to by Judge Warren as so received, is stated at \$7100. [See B. App. p. 52.] That is, Judge Warren, writing under the date of December 19, 1844, while the settlement was yet in progress towards completion, declares, that the amount to be handed over is "subject to the payment of about \$18,000 to Mr. J. W. Boott, *the balance claimed as due to him on the account, after deducting* dividends on Merrimack stock, *received by him after the rendition of the account,*" which dividends we find to be \$7100; and, of course, we perceive that Judge Warren understood, *before* those dividends were received, that "the balance claimed as due to him, [Mr. Boott] on the account," was about \$25,000.

Again, this *after* account, settled Dec. 23, charges the executor with the balance of the preceding account, of Nov. 18, and with his new receipts, and prays to be allowed for the property transferred to the new trustee, namely, the thirty-nine shares of the Boston Manufacturing Company, and the seventy-one shares of the Merrimack Manufacturing Company, and the stable, all passed over, in full, as property of the estate, together with a "note of Wm. Lawrence, Esq. for

purchase money of estate in Bowdoin Square," (i. e. the mansion-house, which had been sold,) \$46,000 00

"From the proceeds of which," (so the account states) "the said trustee," (i. e. the trustee then newly appointed) "*is to pay the cash balance due to the executor,*" 25,215 45

So, the inventory of the new trustee, after specifying this note of \$46,000, says, "*of which sum \$25,215 45 belongs to John W. Boott, executor, being balance in his favour per account settled;*"—and, accordingly, this sum is deducted from the face of the note, or, in other words, *paid* to Mr. Boott *out of the proceeds of the mansion-house.*

These papers then, surely, speak, plainly enough, of *real debt*, and *real payment*. [See the account and the inventory, B. App. pp. 53, 55.]

A few days before this, on the 17th of December, 1844, (which was two days before Judge Warren's letter above cited,) I wrote a letter to Mr. Lowell, informing him that I did not intend to join with him, as one of the trustees under the will of Mr. Kirk Boott of Lowell, in any act, which might bind his heirs to the compromise, made for myself and wife personally, but should prefer resigning my trust. A part of the language of that letter is, "*I am not prepared to say, that, on a full, fair and just settlement of accounts, the executor is entitled to claim a balance of \$25,000.*" [See letter, B. App. p. 50.] Does not that show, clearly enough, how I understood the claim at the time? Does it not show, also, that Mr. Lowell knew how I understood it? If he understood otherwise, and that the real debt, intended to be claimed, was only \$3700, why did he not say so then? I have given an account of the interview, which followed, [B. p. 127.] and Mr. Lowell has commented upon it. [L. p. 193.] There is no pretence of any such notice.

Again, a few days before this, and on the very eve of the compromise, Mrs. Brooks wrote a letter to her mother, under date of December 11, 1844, heretofore printed, in which is the following language: "He [Mr. Lowell] told Mr. Brooks, that neither he, nor Mr. Boott, had ever considered that debt of

\$25,000 in any light but as a private one of Mr. Boott's; and Mr. Brooks replied,—‘ And yet a part of the estate was pledged to you as security for it, and Mr. Boott has paid you out of his mother's income more than \$30,000 as interest’—which Mr. Lowell could not deny.” [B. App. 48.] “ Mr. Boott has moreover taken advantage of our discharge, given him at a time of great distress and embarrassment, as an act of kindness, and not one of justice, to bring in his accounts in such a way *as to make it appear as if the estate was in debt to him \$25,000,—just the amount of his private debt to Mr. Lowell,*” &c. [B. App. p. 49.] This is another proof of the contemporaneous understanding on our part. But this is not all. The letter went to Mrs. Boott, and was transmitted by her from London back to Mr. Lowell, as he admits. [L. p. 205.] He had notice then, again, of what he now calls my “delusion,” [L. p. 204.] in supposing this account to be a *claim of \$25,000 as due to the executor from the estate.* Did he seek to dispel it? On the contrary, we had an interview soon after his receipt of that letter, in which he spoke of it with some excitement, and said much, but not one word to the effect, now suggested, that the account claims a *debt of \$3700 only, and that the property he held in pledge was Mr. Boott's own property.*

Finally, he testified, or stated, at the inquest, as four of the jurors say, that, by the accounts, as made up by himself, it appeared, “ that a clear balance was *due from the estate to Mr. Boott of \$25,000;*”—“ he discovered, that, instead of Mr. Boott being indebted to the estate, *the estate was debtor to him, in the sum of \$25,000;*”—“ he, Mr. Lowell, as a friend of the family, examined into the accounts, and found that there was a balance *due from the estate to Mr. Boott of \$25,000;*” “ It was stated by him that the accounts were examined, and a balance was found *due to Mr. Boott of about \$25,000;*”—[See Declarations, of Andrews, Palmer, Learnard, Dyke, B. pp. 27—30.] all which, positively stated by every one of my witnesses, who speaks to the point at all, is contradicted by no one of Mr. Lowell's witnesses, as I have heretofore shown. To be sure, Mr. Lowell now says, in reference

to some of the statements of that period, that he could not have made such statements, because they were not true. [L. p. 8.] But the jurors, nevertheless, say that he did make them; and, upon the particular point in hand, the *account* says: "Cash balance due to the executor, \$25,215,45;" and the subsequent probate papers show that this cash balance, claimed, was in fact allowed and *paid* by the new trustee, not out of any specific property, which the executor previously held, and *might*, possibly, have had a personal interest in, but out of the proceeds of the real estate sold,—thus charging it upon the *general fund of the heirs*, and treating it as a real cash *debt*, due from them, as heirs, to the executor, as such.

In the face of all this, Mr. Lowell, to escape the pressure of an argument, resorts to the following ingenious mode of producing an impression on his reader that Mr. Boott never pretended to claim from the heirs, and that *he* never pretended to claim for him, more than \$3700, instead of \$25,000!

I should premise that there are, obviously, two distinct questions involved. One is, whether, as matter of *fact*, extrinsic to the account, and independently of its statements, Mr. Boott was, at this time, the *real owner* of an equitable interest, to the extent of \$25,000, or thereabouts, in certain stocks, which Mr. Lowell held in pledge for the private debt of that amount due from Mr. Boott to him. This will be discussed in due time. The other question is, whether *the account CLAIMS a debt of \$25,000 as due to Mr. Boott from the estate.*

I have already extracted, from my former pamphlet, [Ante. p. 144.] the view, which I *first* took of the statements of the account, for the purpose of showing their glaring inconsistency and absurdity, in setting forth a balance of receipts beyond payments to the amount of \$96,284 55 only, and then setting forth apparent investments, as executor, to the amount of \$121,500, charged with the claim of an unexplained cash balance due to the executor of \$25,215 45, which claim is, apparently, inserted by way of forcing the balance of property, to agree with the balance of alleged receipts and payments. That view I still think entirely correct. But, in the course of

subsequent remarks on the account, I inadvertently spoke of it as claiming this cash balance to be due, by *reason* of the executor's having *distributed* to the heirs so much money *beyond* his receipts. This, as a comment upon the allegations of the account, I readily admit was an oversight, and a mere error. It is very true, as Mr. Lowell states, [L. p. 40.] that the account shows cash receipts to the

amount of only	\$186,307 55
Less for probate fees and other small charges,	23 00
	186,284 55

That, of this sum, the trust fund for the widow is not distributable till her death,	100,000 00
Leaving distributable among the heirs, according to the admission of the account, only	86,284 55
And that Mr. Boott claims, by the same account, to have paid to the heirs,	90,000 00
Making an alleged over payment of	3,715 45
So that the <i>whole</i> cash balance, claimed, (\$25,000,) is not stated, by the effect of the account strictly analyzed, to arise from <i>over-payment</i> to the heirs ; but about \$3700 of it appears, constructively, to have been claimed on <i>that</i> ground, and the residue for some <i>other</i> cause, which the account does not explain.	

Now for Mr. Lowell's argument. He selects, for his comment, not the passage above extracted from page 101 of my pamphlet, with which I began my examination of the account, but one from page 116, which is as follows :—"The account alleges, in effect, that, *by reason of cash payments to the heirs, beyond what was due to them*, by \$25,000, that amount of the property, invested and held by Mr. Wright Boott as executor, belongs to him personally." Taking this as if it were my original and *main* proposition, concerning the superficial absurdities of the account, he proceeds to demonstrate its error. He boldly sets forth the entire account, as if it were a most unexceptionable document, challenging investigation. He next analyzes its statements, in the manner above shown, to produce a claim of \$3700 only for *over-payment*; and he

repeats the demonstration in another form to make it tell. Of course, he has easily overthrown my above cited position, in the mind of every reader. He then proceeds to make certain statements of fact, (which I will presently consider,) *out of* the account, for the purpose of showing, that, when he reconveyed to Mr. Boott, *as executor*, the shares, which he held in pledge, he "conveyed to the estate more than it was entitled to receive by precisely \$25,000." [L. p. 42.] He then goes on as follows :

"Thus far the mistake of Mr. Brooks is an innocent and not very unnatural one. When, however, he proceeds to draw inferences bearing hard on Mr. Boott's reputation and on mine, carelessness on his own part can hardly be pleaded in justification.

"Thus, when he says of Mr. Boott, (p. 101) that the account shows, 'that he had invested, as executor, *more than there was*, by \$25,500, and that consequently the estate *owes him that money*, less some small items,' and adds, 'This is certainly a very extraordinary statement, if true; and if it does not prove insanity, must at least be set down for proof of mismanagement' :—

"Or when he says of me, (p. 87) 'Mr. Lowell had, before the 18th of November, 1844, induced him [Mr. Wright Boott] to adopt a form of account, prepared by Mr. Lowell himself, exhibiting an apparent balance of \$25,000, and a fraction, *as due from his father's estate to him* :—

"Or when he allows Mrs. Brooks to say, (App. p. 49) that her brother has brought in his accounts 'in such a way as to make it appear *as if the estate was in debt to him* \$25,000, just the amount of his private debt to Mr. Lowell :—

"Or when he represents the passing of the account as so materially altering the state of Mr. Wright Boott's property, as to *increase the amount* receivable by Mrs. Ralston as residuary legatee, from \$16,000 to \$40,000, and holds me therefore responsible to prove a new publication of his will by Mr. Boott :—

"When Mr. Brooks brings all these various and most serious charges, as corollaries from the balance exhibited in the account, he cannot shelter himself behind his own ignorance and incompetency to understand accounts. These qualities may be pardonable in themselves; but a gentleman, afflicted with them, has no right to convert them into weapons against his neighbour." [L. p. 43, 44.]

Now every one of these propositions of mine, all *preceding* the erroneous passage, which Mr. Lowell had fastened on, and which propositions he treats, by position and context, as if they had been *corollaries* from *that error*, I maintain are perfectly just and true, and nowise dependent upon the proposition shown

to be erroneous. Those, which speak of the claim, as a claim that the estate owes Mr. Boott \$25,000, are dependent only upon the natural meaning of the language of the account, as it had always before been understood and interpreted by all parties concerned, including Mr. Lowell, and as every reader may now interpret it for himself. They have no relation to the question what that claim was *founded upon*, and whether it proceeded from *alleged over-payments* to the heirs, or from *some other* cause. And the proposition referred to, respecting the increase of Mrs. Ralston's legacy from \$16,000 to \$40,000, depends, not upon any statement of the account, nor upon any reasoning of mine concerning its mere statements, but entirely upon this *extrinsic matter of fact*, viz., whether, previously to the stating of that account, \$25,000 of Mr. Boott's *private property* was really *mingled with property of the estate*, in certain shares of manufacturing stock, lying under pledge to Mr. Lowell. If there was no such mixed property in those shares, which I shall presently show, then it is certain that the settlement of that account, in the form, in which it was stated, increased Mr. J. Wright Boott's property and Mrs. Ralston's legacy by that amount, giving to his will an effect, that was never intended at the time it was made. Yet, Mr. Lowell, having gained an advantage by overturning an erroneous position of no importance to the main inquiry, and having presented that proposition as if it were, itself, the very question, and as if the other positions, above mentioned, all rested upon it, continues to hold up that false idea throughout his book ; and returning, towards the end of it, to my remarks on the responsibility he takes in refusing to produce the letter, which, he says, enclosed and republished Mr. Boott's will, he repeats, that "the whole criticism, is founded on that *old delusion*, that Mr. Boott's accounts show a balance *due to him* of \$25,000 for *advances made to the heirs*, whereas they show only \$3700 so advanced." [L. p. 203.]

Now this may be all very well as a specimen of the art of fencing ; but it was not wise to venture upon it in print. It is a device too easily detected ; and, when detected, seems rather to show a thirst for victory on any terms, than a desire

"to elicit the truth ;"—which, as before remarked, lies in matters of fact, quite beside the statements of the account, or my reasoning upon them, whether right or wrong.

To call the *language* of the account any thing else than a *claim* of \$25,000 for a *debt*, alleged to be due *from* the estate *to* the executor, is an affront to common sense, and the people's English. To dispute whether the account asserts this debt to have arisen from over-payment, or over-investment, or an accidental confusion of property, is a mere quibbling about terms, or about an immaterial fact. The only *substantial* point of inquiry is, whether this *apparent* cash balance of the account is a *real* one ; or, in other words, whether Mr. Boott had, in truth, that amount of *his own property*, lying in the shares, which Mr. Lowell conveyed to him, as executor, for the purpose of enabling him to settle his probate accounts.

CHAPTER XIX.

THE ACCOUNT. ITS PRETENCE OF AN EQUAL DISTRIBUTION OF \$90,000. CASE OF THE MINORS.

Before taking up the main question of Mr. J. Wright Boott's supposed ownership of \$25,000 in the property transferred to him as executor, (an inquiry, which involves a range of facts not apparent from the account,) let me, briefly, dispose of Mr. Lowell's answers to certain other objections, arising upon the face of the paper, connected with the will, and with the former probate account of 1818.

I objected, that the account, now in question, if true and complete, shows over-payment to the heirs, (I was misled, by its language, only as to the *amount*,) and that it shows a *misappropriation* of trust funds in making such over-payment;

and this, I alleged, was without the consent or knowledge of the heirs, who were thus allowed to eat up, in ignorance, so much of their reversionary interest, under the idea that they were only using their share of present divisible property, and leaving their reversionary share, unimpaired, to retire upon at a future day. [B. p. 106.]

To this we have no answer. Indeed over-payment, to the extent of more than \$3700, is expressly admitted, as we have just seen ; and Mr. Lowell's own figures show, that Mrs. Boott's undistributable trust fund was reduced by it, from \$100,000, to little more than \$96,000. [L. p. 40.]

Was not that mismanagement ?

In addition to this, I showed, from the account of 1818, that its foot exhibited the probable original formation of a trust fund, designed to cover the several trusts for Mrs. Boott, and for the two sisters of the testator, amounting, together, to \$111,000, and upwards. The funds, to cover these several trusts, ought to have been kept separate and distinct, but appear to have been blended in one. That they were so, Mr. Lowell admits. [L. p. 24.] All the investments of that fund are shown, by the account in question, to have been afterwards sold, producing about \$117,000 ; and I objected, that no account whatever is given of the reinvestment of that sum, nor of the changes that occurred in its employment, except as they may be inferred from the fact that certain property is stated, twenty-six years after, to be in the executor's hands, amounting, at cost, to \$121,500, subject to an alleged cash balance due to him, whereby it is reduced to little more than \$96,000,—the fund of \$11,000 for the two sisters having thus wholly disappeared, together with a portion of the fund for the widow, without any account of the time, manner, or cause of their disappearance, unless distribution, at some time, is to be inferred ;—which, if it were the fact, I aver to have been unknown to the heirs.

To this there is no answer, and the fact is plain. Is that due accounting, or proper management ?

I further stated that,—

"Another mismanagement, equally apparent on the face of the account, lies in the statement that \$10,000 exactly, and no more, was paid to each of the heirs. If so, it was a great injustice to the minors, and directly contrary to the provisions of the will. According to the will, the shares of those who were of age, in the divisible property, were payable in March, 1818. But the shares of the minors were to be *placed out at interest* and paid to them, when they should come of age. The share of the youngest child, (Mr. William Boott) by accumulation of compound interest, would have nearly, or quite, doubled at the time he was entitled to receive it. Yet the account states, that all the heirs were paid just alike, and precisely \$10,000, at whatever time it was payable; and does not state that the shares of the minors were placed out at interest for their benefit; but, on the contrary, does state, that all the income of all the moneys and investments of the executor, from the beginning to the end of his executorship, was 'paid to, or for account and by order of, the widow'; and though he speaks of it as '*income received on the trust fund for the widow*', he gives no account of income received from any other source, although it is plain, that large sums of money, beyond the \$100,000 appropriated to the widow, must, at times, have been in his hands, and some of them for years, during the minority of the owners." [B. p. 106.]

To this a partial answer is attempted. Mr. Lowell denounces this charge, against Mr. Boott, "strange recklessness;" because, he says, although it was provided in the *will*, that the shares of the minors should accumulate, this was *altered* by the *codicil*, which provides "that the clothing and educating of each of them shall be charged to him or her by my said wife Mary, and be allowed to her." To this the "Reply" adds, "to any one familiar with the expensive habits of the family, the idea of any accumulation from savings on the interest of \$10,000, if the expenses of the minors were chargeable to them, is preposterous. No one knows this better than Mr. Brooks." [L. p. 65.]

Now to this I might reply, in Mr. Lowell's style, that "to any one familiar with the habits of the family, the idea of any specific charge having been made to the minor children, for their personal expenses, is preposterous. No one knows this better than Mr. Lowell."

But, I will simply content myself with averring, that no such charges were ever made to any of them, while members of their mother's household, either by her, or by Mr. J. Wright

Boott ; and that no account was ever kept with any one of them. If this be not so, let Mr. Lowell show the contrary by " all the documents " in his possession.

Besides, Mr. Lowell overshoots his mark, greatly, in suggesting that the estates of the minors were made chargeable, by the testator, for their share of "the expensive habits of the family," if, by that, he means general maintenance, according to the style of living in Mrs. Boott's establishment. The provisions of the will,—by which I mean, of course, the will and codicil, taken together,—are very distinct on this point. By the original will, the interest of the \$100,000 fund was given to Mrs. Boott, not only for her own support, but, expressly, for "*the support of our minor children, and for the educating of them*, until they each shall arrive at the age of twenty-one years ;" and the proportional share of each minor, in the general estate, was directed "to be placed out at interest on good security," until they should respectively come of age, when it was to be paid to them. By the codicil, it is provided, that, *until May 19, 1818*, (the appointed day of distribution,) "my wife and *family* are to be *maintained, clothed, and the children educated*, in the same manner as during my life-time, the expenses of which are to be *charged to my estate* ;" and *after* that date, the provisions of the original will are so far altered by the codicil, that, instead of throwing the *entire* expense of the minors upon the widow's income, it is provided, in the language before quoted,—not that she should be relieved from the expense of *general maintenance*, but—"that the *clothing and educating* of each of them shall be charged to him or her by my said wife Mary, and be allowed to her." This was, of course, optional with her ; and, *if* she made such charges, they were to "be allowed to her." And, in respect to the placing of the shares at interest on good security, the will is only so far modified by the codicil, that the executor, or guardian, is authorized, in case the testator's sons should carry on the old mercantile business on their own account, to lend to them the portions of the minors, "they paying interest for the same." [See the Will and Codicil, B. App. pp. 5-9.]

The widow, therefore, was still left *bound to support* her minor children, with a *right to charge*, if she pleased, their *clothing* and *school bills*,—which, I venture to say, she never did,—and the shares of the minors were still to be at interest, and accumulating, subject to that contingent charge. Supposing, for argument's sake, such charges to have been made, and supposing the share of each child in the divisible estate to have been \$10,000 only, as Mr. Lowell contends, instead of \$20,000, as I contend, will Mr. Lowell pretend, that, during the entire minority of these children, (the youngest being about twelve years of age at the father's death,) their expenses of *this description*, measured by the scale of from twenty to thirty years ago, amounted to any thing approaching \$600 a year each? Will he say, that there was no room for accumulation from the interest on \$10,000, after paying such bills? Or, that the expenses of all, boys and girls, of different ages, were just alike? If not, how happens it, that when they came of age, successively, they should *all* be found entitled to *just the same sum*? Not only so, but just the same sum with those heirs, who were adults at their father's death, and for whom no accumulation was directed? I submit to the reader that the objection is not answered ;—that there is no account given, even by implication, of interest, *not payable* to the widow, upon considerable sums, which must either have lain in the executor's hands, for years, or should have been lent by him on interest ;—and that the payment of \$10,000 and no more to each heir, supposing that to have been the original distributive share, was a great injustice to some of them, and a direct violation of the spirit and letter of the will.

Was there no mismanagement in all this? And is not this a necessary inference from the account?

Another objection related to the allegation of the account that \$90,000 had been distributed among the nine heirs, in full, as Mr. Lowell asserts, of their respective shares, reversions excepted. As this is nearly connected with the subject I have been just discussing, it may well enough be noticed here, although it involves the statement of some facts, not shown by the probate records.

I formerly declared my belief, that much more than \$90,000 had been permitted to go to the use of the heirs ; but not with any equality, nor as a regular distribution. [B. p. 109.] I admitted, that, in my own case, I had received from Mr. J. Wright Boott his personal promissory note for the exact sum of \$10,000, which note I, afterwards, exchanged for Mr. Kirk Boott's, at the request of that gentleman, and heard no more of. [B. p. 35.] The note of Mr. Kirk Boott, which I received in that exchange, was paid, many years after, in the course of the settlement of his estate ; and, thus, so much of the sum due to Mrs. Brooks from her father's estate was, at last, realized. The note of Mr. J. Wright Boott, which I so exchanged, had been handed to me, by him, Dec. 29, 1823, *expressly* as a payment *on account*, and *not in full*, of Mrs. Brooks's then distributive share. This fact, my receipt, in Mr. Lowell's possession, if he would have the goodness to produce it, would undoubtedly prove.

Payments of like amount were made, a year or two before, to two others of the heirs, (Mrs. Lyman and Mrs. Ralston,) whose husbands gave receipts, also, which Mr. Lowell might produce, if he would ; and which, if produced, would be found, I doubt not, to exclude, like mine, the idea of a final settlement, or of payment in full.

This branch of the subject, involves the question, how much a distributive share really was, or was then represented to be. I shall have occasion to discuss it more fully hereafter. At present, I only undertake, in passing, to say, in the face of this allegation of the account, and of Mr. Lowell's bold assertions, that no one heir ever received the sum of \$10,000, as a payment, *in full*, of his or her distributive share of the estate, reversions excepted.

If I am wrong, how easy is it for Mr. Lowell to convict me of my error ? He pretended, in his interviews with Judge Warren, that this account "could be sustained throughout," beyond any possibility of question ; [See Judge Warren's Letter, *ante*, Ch. 16.] and he pretends, now, in his pamphlet, [L. p. 208.] that Mr. Boott would not have had the least difficulty in proving it, if its opponents had not backed out

from the contest. Now, if there was any one thing in it easily proveable, *provided it were true*, it would be this final distribution. Every heir, who received his \$10,000, would, of course, have given his receipt. The receipts, for every such payment, are, of course, in the possession of Mr. Lowell, as the executor of Mr. Boott. I challenge him to produce them. Let us see the evidence of this pretended distribution and settlement. All the papers, needful to establish that final payment, if there were any such final payment, must be few, short, easily printed, and perfectly conclusive in their character, one way or the other. Why does not Mr. Lowell simply show these papers, instead of writing an elaborate argument to prove, by indirection, that \$10,000 apiece must have been distributed to the heirs, and that this was all, or more than all, they were entitled to receive? If he can produce an original receipt, *in full*, from *any one heir*, for his or her distributive share of all the estate, reversions excepted, made upon receiving from the executor sums to the amount of \$10,000, or its equivalent, and no more,—or, if he can produce any form of receipt, which expresses, that, in consideration of \$10,000 paid, in the aggregate, and no more, the executor is discharged from all further claim, except for the reversion of the particular trust funds, I shall be obliged to admit myself mistaken on a most material point. If he neither produces such a paper, nor shows some more satisfactory excuse for the omission than yet appears, he must expect to have his pretence of an equal distribution of \$90,000, in settlement with the heirs, treated with no more respect than it deserves.

CHAPTER XX.

THE ACCOUNT. ILLUSTRATIONS OF THE INEQUALITY OF DISTRIBUTION. CASE OF MR. WILLIAM BOOTT.

The account claims that a capital of exactly \$90,000 had been equally distributed among the nine heirs, and that precisely \$10,000 had been paid to each of them in full settlement for his or her distributive share, except in the reversion of Mrs. Boott's annuity fund, which, of course, could not be distributed in her life-time. This alleged equal distribution I aver to be an unfounded pretence.

To show that, without adverting, unnecessarily, to the affairs of other members of the family, (which I may, at last, be driven to by Mr. Lowell,) I thought myself, formerly, at liberty to state, among other proofs, that, in my own case, besides the \$10,000 note, Mrs. Brooks received the complete furnishing of a house, at her marriage. Mr. Lowell adopts the statement. [L. p. 53.] I might have stated, by way of contrast, that Mrs. Lyman, who was married on the same day, received no such outfit. But I pray Mr. Lowell to note, that I do not now state this on *her authority*. I state it as a matter of family history, well known to me at the time, if not to Mr. Lowell.

I also adverted to the case of Mr. William Boott, because it was mentioned in a letter, which, from its connexion with Mr. Lowell, I felt called upon to print. I mentioned this as the case of an heir, who had never received, in payment of his patrimony, "*any specific sum*, though it is true, that a considerable expense must have been incurred on his account, before he was of age, while travelling in Europe, of which no account was ever kept or rendered, and for which there was no voucher." [B. p. 55.]

"This charge," Mr. Lowell says, "rests of course on Mr. William Boott's personal knowledge;" [L. p. 61.] and he, con-

sequently, makes it an excuse for a personal attack on that gentleman, in matters, which have very little relation to the subject in hand, accompanied by insinuations, manifestly *intended* to harm his general reputation, so far as Mr. Lowell's authority may go, for the purpose of detracting from his credit as a witness.

Now, I have already stated, that Mr. William Boott is accountable for nothing, in my former pamphlet, but that portion of the narrative, which is expressly declared in it to rest upon his authority; and that is confined, strictly, with I believe one single exception, which I shall presently notice, to facts bearing, exclusively, on the question of insanity. As to the circumstances of Mr. William Boott's absence in Europe, at an early period of his life, they were all very well known in the family at the time. Mr. J. Wright Boott travelled with him there, the first year, as Mr. Lowell informs us. [L. p. 61.] Shortly before the return of Mr. J. Wright Boott, Mrs. Boott made a visit to Europe, and was absent about two years, mostly living, or travelling, in company with Mr. William Boott. In 1824-5, I, also, was in Europe, with Mrs. Brooks, and, when in Paris, we lived in the house with Mrs. Boott, and Mr. William Boott, and Dr. Francis Boott and his wife and children, where we all made one family. After our return, family correspondence and intercourse kept me, of course, well advised of Mr. William Boott's movements, occupations, and mode of life, abroad. My former statements, on that score, required no information from him. It was equally well known to me, that Mr. J. Wright Boott kept no accounts, and took no pains to keep vouchers for these matters of family expense; and I had known, for years, speaking in common parlance, though it may not have been the strict personal knowledge required in a court of law, that Mr. William Boott had never been settled with by his brother, nor received *any thing* as a *specific payment* on account of his patrimony. He had, besides, been consulted by me on a draft of a petition to the judge of probate, which, when the executor's account was presented, in 1844, I prepared, as a paper to take counsel upon. The paper was in

fact never presented, nor even signed ; but it purported to object to this item of the account on the ground above-mentioned. I had no occasion, in the preparation of my pamphlet, for any information from Mr. William Boott on these heads, and in fact had none. Mr. Lowell's excuse, therefore, for publishing matters personal to Mr. William Boott, such as they are, rests upon an assumption equally gratuitous and unfounded.

But how does Mr. Lowell deal with me in the matter ?

He begins by stating, that “ it is alleged [by me] in distinct terms and in various forms, that that gentleman [Mr. William Boott] *never received any thing from his father's estate.*” [L. p. 60.] Is it so ? We shall see.

He then says, that, “ in the memorial prepared for presentation at the probate office, by Messrs. Edward Brooks and William Boott, [meaning the draft above mentioned, which I put into the hands of counsel, but which was never signed by any body,] it is expressly said, and if my memory serves me, without qualification, that Mr. Wright Boott had never paid his brother any thing *towards a settlement.*” [L. p. 60.] The Italics, here, are Mr. Lowell's,—notwithstanding his general objection to that form of type.

This only shows that Mr. Lowell's memory, sometimes, serves him no better than he thinks mine serves me. I extract, from the memorial, the passage he refers to.

“The said William Boott on his part says, in regard to this item, that he has never been *furnished with any account* by the executor of any kind whatever, nor has he ever *received the sum of \$10,000*, nor any other sum, for, or on account of, *a settlement* with the said executor, as one of the heirs.”

This paper, which Mr. William Boott neither contributed to make, (as Mr. Lowell would have his reader believe,) nor even adopted, (unless allowing me to submit it to counsel, for advice, can be so construed,) does not assert, as Mr. Lowell pretends, that this heir had never *received any thing*, which *may have proceeded from the estate*, or that his brother had never *paid any thing for him*, which, upon a just settlement of his account as an heir, might not, properly, have

been charged against his share of the common patrimony, and so have gone "*towards* a settlement;"—but that, which it asserts, is to the effect that there never had been *a settlement*; that the executor had never *stated his account* with him as an heir; and that he had never received \$10,000, or any other specific sum, intended and known to be a *payment of*, or *in settlement for*, his share of the inheritance; which is a very different thing. And the latter is the just effect of what I said on this subject in my pamphlet.

Mr. Lowell, however, (who has no more respect for context, and order of remark, than he says I have for chronology,) has an ingenious way of beginning at the wrong end of a series of statements, and turning them inside out, so as to make them appear to serve a purpose, for which they were not intended. Some instances of this sort of unfairness have already been noticed. Another occurs here.

He begins, as above shown, with the general assertion that I had alleged, in distinct terms and various forms, that Mr. William Boott "had *never received any thing from his father's estate.*" He follows that with his "*reminiscence*" of the memorial, as alleging "*that Mr. Wright Boott had never paid his brother any thing, towards a settlement.*" Next comes an extract from a letter of Mrs. Brooks to her mother, printed in my Appendix, which used the words, "*when William has not been paid any part of his portion,*" without stating the tacit exception, well known to Mrs. Boott, of the expenses incurred for him in Europe. He then proceeds to cite, in support of his general assertion concerning my allegations, a single passage, from page 84 of my pamphlet, which, taken by itself, might, perhaps, bear that construction. I was then commenting on Mr. J. Wright Boott's will, and asked this question:—"In the division of the bulk of his property, why should *Mr. William Boott, the brother, of whom he had once been particularly fond, to whom he had paid nothing on account of the \$20,000, or more, which should have come to him from his father's estate*, and who had generously released him, in his distress, from all claim on that account, have been wholly cut off?" Mr. Lowell picks out, from this sentence, for the purpose of citation, the words which I have Italicised above.

That is, he selects, from a sentence, one of several circumstances in it, all of which had been previously explained, and are here alluded to, in passing, as matters, with which the reader has been already made familiar, and he treats that incidental allusion as if it were *the subject* of the sentence, and the *principal proposition* laid down by me on *that subject*.

Having thus smuggled a false idea into the mind of the reader, he goes on, with great appearance of candour, to admit that there are passages, in which “this broad assertion is, prudently and in anticipation of my reply, qualified as follows :” [L. p. 60.] and he then quotes, from page 109, a part of another sentence, in these words,—“unless allowing him to spend a great deal of money, while a boy, in Europe, is to be deemed a payment on account of his capital, while members of the family, at home, were living at the general expense of the estate.” And, finally, he quotes, from page 55, the sentence, which occurred *first* in my pamphlet, on this subject. *Here I was commenting, directly, on the claim of the account for a pretended equal and final distribution, by the payment of \$10,000 to each of the heirs, in settlement for their shares ; and, in reference to that, I stated, that Mr. William Boott “never received any specific sum, though it is true that a considerable expense must have been incurred on his account before he was of age, while travelling in Europe, of which no account was ever kept or rendered, and for which there was no voucher.” This was my original statement of the case ; it is, to the letter, a perfectly true statement ; and all the subsequent passages, which Mr. Lowell quotes, either referred, or alluded, to that, and necessarily carried with them its qualification, even if I did not repeat it, (as I believe I usually did,) whenever I spoke of the non-payment to Mr. William Boott.* Yet, says Mr. Lowell, “it is alleged, in distinct terms and various forms, that that gentleman *had never received any thing from his father’s estate*”! And it is made a subject of complaint, by Mr. Lowell, that this charge, *without the qualification*, had been made in Mr. J. Wright Boott’s life-time, “in letters not communicated to him, and intended to affect the opinion of his mother”! [L. p. 60.] As if

she did not know, as well as Mr. J. Wright Boott, the circumstances of her youngest son's long absence in Europe!—especially when she had lived there with him the greater part of two years! Mr. Lowell, by the way, speaks, above, of "*letters*" written with that view, and containing "this broad assertion," that *nothing* had been paid to Mr. William Boott, *without* the qualification. If it had been an object for Mr. Lowell to confine his statements to a resemblance of the truth, he would have said "*a letter*;" for the only one, that I am aware of, containing such a statement, is the letter from Mrs. Brooks to Mrs. Boott, printed by me, and referred to above. The occasion of its being written will appear by-and-by.

As to the complaint, that my draft of a memorial for the judge of probate, "*since Mr. Boott's death, at least*, has been put in circulation," [L. p. 60.] that is simply a mistake. It was, *before* that event, shown, in confidence, to my counsel, and to Mr. William Boott. It was, afterwards, shown, in like confidence, to some very particular friends, in answer to their inquiries, caused by reports, which took their origin, I believe, from Mr. Lowell. But this, also, was *before* the death of Mr. Boott. I have no recollection, or belief, that any one has seen it *since* his death, except my counsel. At any rate, it is not true, that it "*has been put in circulation*," at any time.

But let us now see what qualifications of my former statements, on this branch of the subject, I ought to make, upon Mr. Lowell's present showing.

It is stated by him, [L. p. 61.] that "Mr. William Boott went abroad, for the benefit of his health, in 1822, [being then scarcely seventeen years of age,] and, after travelling, under the charge of his brother Wright, about a year, was left in Europe to pursue the study of medicine, and did not return until November, 1827." That is, he was absent, altogether, five years or more; of which period something less than a year and a half was after he came of age, according to the date given by Mr. Lowell. [L. p. 63.] If he is right in that, I was mistaken, then, in speaking of this

gentleman as *under age*, throughout the *entire* period of his stay abroad. That was *literally* true only for *more than seven tenths* of the period.

Mr. Lowell says I was "very much mistaken" in stating, "that for these expenses in Europe there was no voucher;" and he refers to certain original letters and accounts current of Mr. Samuel Williams, of London, and of other merchants abroad, which he has found among Mr. Boott's papers. [L. p. 62.]

That Mr. Lowell happens to find vouchers of this description, for a part of this period, is owing to nothing but the accidental circumstance, that the transactions passed through the hands of foreign bankers, or commission merchants, who, of course, transmitted *their* accounts to their employer, Mr. J. Wright Boott. So far as those accounts may vouch payments, specifically and distinctly, for Mr. William Boott's own use, I admit the correction.

The main question, however, on this point, is, whether the allegation of the probate account, that \$10,000 had been paid to Mr. William Boott in a distribution of the estate, and in full for his share, except in the reversions, is true? It is not pretended, by Mr. Lowell, that any such payment had been made, otherwise than by defraying that gentleman's European expenses, or by his living at home, after his return. Now the amount of Mr. William Boott's expenses abroad, at that early period of his life, is, of course, unknown to me. I imagine it is to himself. Mr. Lowell admits that it is unknown to him.

"What the amount of Mr. William Boott's expenses were, during the *four* years of his residence abroad, *after* his brother's return to this country, I [Mr. Lowell] do not know." [L. p. 61.]

He says nothing of the expense of the year *before* that return. Of that he is, evidently, equally ignorant. How is this, if I was so "*very much* mistaken," in supposing that Mr. J. Wright Boott was not accustomed to state and keep accounts and vouchers of these matters?

The accounts current of Mr. Samuel Williams, referred to

by Mr. Lowell, run, as he says, from October, 1825, to November, 1827. [L. p. 61.] That is, they cover the *last two* years, only, of Mr. William Boott's foreign residence; and sixteen months, out of the twenty-four, were, according to Mr. Lowell, *after* he was of age. [L. p. 63.] But is it not very clear, from Mr. Lowell's showing, that he did *not* expend his whole patrimony in Europe, as Mr. Lowell pretends, so as to justify this charge, in the probate account of 1844? Our views of accounts, it has been seen, sometimes differ widely; but, as I have never seen the particular accounts current spoken of, I take, for my present purpose, his own statement of them.

He says, the charges, in those accounts, which belong to Mr. William Boott's personal expense, for those last two years, amount to \$6500; and that he knows no reason to doubt, that the two preceding years were equally costly. [L. p. 61.] But are the expenses of a boy from eighteen to twenty, usually, as large as those of a young man from twenty to twenty-two?—Do the expenses of a student at a medical school, (if that was Mr. William Boott's position, as Mr. Lowell asserts,) usually compare with those of a gentleman travelling in Europe, or beginning to occupy, there, a place in society?

During the greater part of the "two preceding years," however, Mr. William Boott was, in fact, living or travelling, in Europe, in company with Mrs. Boott, a large portion of the time being spent in Paris. The *last* two years, on the other hand, were after his mother's return to this country, and were passed by him in Great Britain, and were, no doubt, attended with considerable expense. He alludes to this in one of his letters from Dublin, printed by Mr. Lowell. [L. p. 132.] His expenses, there, are, manifestly, no criterion for those of earlier years, passed elsewhere, and under different circumstances. The argument, however, is, that if those years were "only half as costly, he still expended the sum of \$10,000, charged to him in the account, before he returned to this country." [L. p. 61.] Suppose he did, (which is entirely gratuitous,) that does not meet the true

question. The question is,—not how much money, in the whole, Mr. William Boott's residence in Europe may have cost to somebody, but,—whether this sum is rightfully charged to the estate by the executor, in his account of 1844, as a distributive payment of capital. In other words, the fair inquiry is, how much of that \$10,000, (if he spent any such sum,) was properly chargeable upon his share of the patrimony?

Until he came of age, we have already seen, that his patrimony was expressly exempted, by his father's will, from all charge, except for clothing and education. If his mother, with the concurrence of the testamentary guardian, chose, instead of maintaining him at home, to send him abroad, at the age of seventeen, and to maintain him there, during the residue of his minority, although this was done from the best and kindest motives of motherly and brotherly affection, all this does not alter the will, nor authorize the executor and guardian to charge, upon the estate, and his ward's patrimony, a class of expenses abroad, for which, during minority, he was not chargeable, at home. Even the clothing and education bills were optional with the mother to charge against him or not. There is no evidence, and I have no belief, that she ever authorized, or that Mr. J. Wright Boott ever made, on her account, any such charge against Mr. William Boott, or against any other one of her children. Be that as it may, the general expense of his living and travelling in Europe, from seventeen to twenty-one, clearly did not touch his patrimony, any more than the many superfluities of indulgence allowed by Mrs. Boott to her children, at home, touched theirs.

Perhaps it may be said, that so much, at least, of the entire expenditure, during minority, as belongs fairly to the particular items of clothing and education, ought to be regarded, in equity, upon a settlement of accounts, in 1844, as a payment out of his patrimony, even if no specific charge were made for them, at the time. I do not admit this; but, assuming it for the present, the question would then arise, what was the amount, which Mr. J. Wright Boott, if authorized by Mrs.

Boott, *might* have charged against Mr. William Boott's share of the estate, for the expense of his *clothing* and *education*, while a minor in Europe? Mr. Lowell does not tell us this; but it was, certainly, a matter for the mother and guardian, and not for the boy himself, to regulate; and Mr. Lowell does tell us, that it appears, by a letter from Mr. Williams of London, to Mr. Welles of Paris, that the regular allowance for *all* his expenses, (so Mr. Lowell reads it,) was only £100 a year! [L. p. 61.]

Mr. Lowell remarks, by the way, that this allowance comes to “\$500, the interest at five per cent. of \$10,000.” [L. p. 63.] What of that? He affects to consider it proof, that \$10,000 was the known, and admitted amount of each heir's inheritance. Had the allowance happened to be \$400, he might, with just as much force by way of an argument, have remarked, that this sum is just the interest at *four* per cent. of \$10,000. Whatever the *amount* of the patrimony was, and whether it was lent to the firm under the authority of the will, or lay in the executor's and guardian's hands unaccounted for, the *rate* of interest, to be paid for it, undoubtedly was *six* per cent., and the allowance, to help Mr. Lowell's argument, ought to have been \$600; or, if it was \$500, the share ought to have been only about \$8300.

But let us consider, for a moment, how Mr. William Boott's account with his share of the estate ought to have stood, on the day of his majority, supposing that share to have been no larger than Mr. Lowell pretends, that is, \$10,000. According to the will, it should have been on interest from March 19, 1818, to June 15, 1826, when, according to Mr. Lowell, Mr. William Boott attained his majority. [L. p. 63.] If the interest were not withdrawn, but reinvested, and nothing were charged for clothing and education,—which I aver to have been the fact,—the fund should, then, have amounted to about \$16,000. But, supposing him to have been charged with that class of expenses, what were they? For the four years, from the age of thirteen to that of seventeen, while he was living at home, they could hardly have exceeded \$1200, in the whole, according to the scale of that day; and while

abroad, from the age of seventeen to that of twenty-one, if we appropriate, for that *class* of expenses, the *whole* of his allowance, as shown by Mr. Lowell, it would add but \$2000 for these four years; and allowing interest upon these charges, as we do on the other side of the account, we shall find, on the day he came of age, a balance of, at least, \$12,000, to represent his patrimony, besides reversionary interests. From that day, it is true, *all* his expenses became a charge upon his own property; and, estimating them according to the rate indicated by Mr. Lowell, with a proper interest account, both upon the charges and upon the property, he should have found, on his return to this country, some seven or eight thousand dollars, at least, remaining, out of the original ten thousand, after all proper and allowable charges had been made. If the original amount were \$20,000, or near it, as I aver, instead of \$10,000, as Mr. Lowell avers, the accumulation by interest, during minority, beyond the expense, for which the minor's property was legally chargeable by his father's will, would have been enough, probably, to have covered all Mr. William Boott's expenses in Europe, *after* he was of age, and to have left his original share quite unimpaired; and this, it will presently be seen, must have been the view originally taken by Mr. J. Wright Boott, to account for his representations, in 1827, of the amount then due to Mr. William Boott.

That gentleman may well be excused, therefore, for having "*forgotten*," as Mr. Lowell ironically remarks, "that he had consumed his entire patrimony before he was twenty-three years of age." [L. p. 63.] No such fact had happened, even if we admit Mr. Lowell's unfounded assumption that the original share was only \$10,000, instead of \$20,000, or near it, as I shall show it was. But without discussing, now, the question what it really was, I may suggest, that Mr. William Boott had the best reason in the world for *believing*, that he was entitled, even after all his expenses in Europe had been *paid*, to \$20,000, exclusive of reversions;—for *Mr. J. Wright Boott told him so*. This is the single exception, I spoke of, to my statement, that all the facts, in my former pamphlet, resting

on Mr. William Boott's authority, related, exclusively, to the question of his brother's sanity.

How does Mr. Lowell get over this fact? I stated it, distinctly, in my former pamphlet; [B. p. 55.] but Mr. Lowell never once alludes to it in his "Reply." The fact will be found to deserve a little more consideration. It deserves, too, a more particular report of the circumstances than I formerly gave.

The statement was not made to me with any reference to the use I made of it, nor any where near the time of my preparing my pamphlet, but many years ago, and under circumstances, which impressed it on a memory not yet successfully impeached. The date I cannot fix precisely; but it was after Mr. J. Wright Boott's embarrassments of 1830, and at a time when Mr. William Boott was thinking of engaging in a particular business. He talked with me on this point, and mentioned, in the course of the conversation, that, upon asking about the amount of his property, in Wright's hands, soon after his return from Europe in 1827, (since which time he had, then, never exchanged a word with his brother on the subject of property or accounts,) he was told, by him, that he would have \$20,000, from the property soon to be divided. Before this conversation between Mr. William Boott and myself, the disclosures had been made by Mr. J. Wright Boott, to Mr. Kirk Boott and myself, which I shall presently notice more fully; and we had thereby become aware, that Mr. J. Wright Boott had lost all his own property, and had not enough in his hands even to make good the particular trust funds established by his father's will,—as will presently distinctly appear. For reasons, which will also appear, I did not feel myself at liberty to lay open this state of the case to the other heirs. But, that Mr. William Boott might not act upon a false idea, I advised him not to place too much reliance upon any statement of his brother, made so many years ago, with some remark intimating that I thought there might be a mistake. I remember well the warmth, with which Mr. William Boott, looking on my distrust as a sort of reflection on his brother, insisted, that there could be

no mistake, because Wright certainly knew best, and certainly told him so. Finally, I recommended to him to consult his brother again about the state of his affairs, and to push him to some distinct answer. He did so, as he soon after reported to me. He stated to his brother what he was thinking of, and what he knew about a particular opportunity to engage in business, and urged him, on that account, to let him know exactly how he stood. Mr. J. Wright Boott, being thus urged, abruptly answered, with some bitterness of tone, "You are not worth a farthing, nor I either ;" and so the conversation ended.

The reader will bear in mind, that, in the interval of a number of years, between the two conversations of Mr. William Boott with his brother, Mr. J. Wright Boott had become sensible of the fact, that he had lost, not only his own property, but all the property of his father's estate, not previously paid to the heirs, except a remnant, which was insufficient even for his mother's trust fund, and left nothing for any unpaid heir, except a share of what might remain of the reversionary property, at his mother's decease.

All this, though disputed by Mr. Lowell, I shall abundantly make good. The conversations, between me and Mr. William Boott, rest, of course, on my own credibility ; but I may refer, in confirmation of them, to that gentleman.

In qualifying my remark, that Mr. William Boott had received no specific payment on account of his patrimony, by adding, "though it is true, that a considerable expense must have been incurred, on his account, before he was of age, while travelling in Europe," Mr. Lowell complains, that Mr. Brooks "*contrives* to introduce, with apparent simplicity, no less than three *unfounded* statements, affecting the *character* of his own brother-in-law, removed by death from the opportunity of a reply." [L. p. 64.] Here we have another specimen of Mr. Lowell's candour. He specifies the unfounded statements as follows :—

- “ 1. That Mr. Wright Boott allowed these expenses.
- 2. That Mr. William Boott was a boy, and under age at the time.
- 3. That he was travelling, by permission of his brother, in Europe.

All three allegations are *distinctly set forth*, and all three are *utterly unfounded.*" [L. p. 63.]

The distinctness of these allegations seems to be Mr. Lowell's work, rather than mine. But I beg to ask, what there is, in my language, above quoted, that *reflects* on the *character* of Mr. Boott?—unless as a manager of trust property, which is the very point I am compelled by Mr. Lowell to discuss. When I denied the payment to Mr. William Boott of any specific sum on account of his patrimony, ought I not to have made the qualification I did? Could I have made it in more appropriate terms?—or terms less reflecting on Mr. J. Wright Boott?

I ask further, whether my statements, on this head, were, as Mr. Lowell charges, "utterly unfounded"? So far from it, as to the *facts*, all I said turns out, by his own statement, to have been strictly true, except that, according to his statement, Mr. William Boott was *not under age* during a *portion* of the period, in which his European expenses were incurred. Mr. Lowell, indeed, says also, that he was not *travelling* in Europe, while under age, or at least not by his guardian's permission, but that he was placed at a medical school; [L. p. 54.] and he says, that Mr. William Boott spent, before he was of age, more than he was allowed, and that I reflect upon Mr. J. Wright Boott for having permitted him to do so. The reflection Mr. Lowell makes. I simply stated the fact, as I supposed it to be, namely, that considerable expense must have been incurred on his account, while under age, and travelling in Europe; and Mr. Lowell now says, that this was the fact, except that, instead of *travelling* in the strict sense of the term, he was only *away from home*, and at a medical school. That I certainly made no point of; nor is the fact, as Mr. Lowell now asserts. I never intended to intimate a doubt, which I am sure I do not feel, that Mr. J. Wright Boott did, with his mother's sanction, what he considered, at the time, to be for the best interest of his ward and youngest brother. In one sense, at least, Mr. J. Wright Boott must be deemed to have allowed the expenses, if, during the wardship, he furnished the funds and paid the bills.

The point, made by Mr. Lowell, is one, however, which I never offered to discuss. I discussed nothing but the allegation of the probate account, that \$10,000 had been paid to this heir for his patrimony ; and I alluded to the expenses in Europe only as they bore on that question. If Mr. William Boott spent there more than his brother intended he should spend, he, certainly, (considering his age, and the circumstances,) is not *more* to be blamed for it than Mr. J. Wright Boott, to whom I impute no blame on that account, and who, I am confident, never intended to charge, nor ever did charge, the expenses so incurred, during the term of minority, to the account of his ward's patrimony. No such idea was ever dreamed of, in my belief, until Mr. Lowell made up the probate account of 1844 ; and we shall presently see, how reluctantly Mr. J. Wright Boott (then, as I think, in a very disordered state of mind,) adopted it.

But, it is very apparent, that all this cavilling, about my pretended attacks on Mr. J. Wright Boott's general character and reputation, is only forcing a false issue, for the purpose of justifying, or excusing, Mr. Lowell's own attack on Mr. William Boott, whom he insists on treating as a joint author of my pamphlet. It affords to Mr. Lowell a shallow pretext for misinforming the reader, that that gentleman, while a youth, neglected "the golden opportunity," which, according to Mr. Lowell, his brother had provided for him, "to study medicine in the best schools of Paris and Dublin, to qualify him to gain his livelihood as a physician or surgeon ;" [L. p. 64.] and for further misinforming the reader, that, after wasting "his entire patrimony" in foreign capitals, he lived, for more than ten years, "for aught that appears, at the expense of the estate." [L. p. 62.]

Nothing can be more unjust. I never before heard, and do not now believe, that Mr. J. Wright Boott carried his brother to Europe, or that he left him there, with any such purpose, or under any such definite arrangement, as Mr. Lowell now ventures to assert, on his own unsupported authority. It is true, that, Mr. William Boott, while in Europe, and *after* his brother had left him there, did, at one time, turn his

attention to medical studies, and prosecuted them with interest and assiduity. This, so far as I know, or believe, was entirely his own movement, and not in pursuance of any arrangement made for him, or suggestion made to him, by his brother Wright. Indeed, I may say, that I know this, so far as the subject admits of knowledge ; for I was myself with him in Paris, at the time when he had but lately begun to prosecute medical studies. I refer to the time, before mentioned, when Mrs. Boott, Mrs. Brooks and myself, Dr. Francis Boott and his family, and Mr. William Boott, were all living there, together, in 1824–5. Mr. J. Wright Boott had returned to Boston in the autumn of 1823. Mr. William Boott's plans and pursuits were, of course, subjects of interest to our family circle, in Paris ; and I well remember Dr. Francis Boott's relating to us the fact of Mr. William Boott's first attendance there at an anatomical lecture. Mr. William Boott told me, besides, of his having begun to study medicine, a very short time before, at Edinburgh. Probably Dr. Boott's example, perhaps his advice, may have suggested this pursuit to his brother. The idea appeared to have originated at the time, of which I speak ; and it is certain that he had not been placed at a medical school by Mr. J. Wright Boott, and had not been engaged in medical studies by any direction from him, nor until some considerable time after Mr. J. Wright Boott had left Europe.

It is also true, that, after a year or two, he abandoned the idea of pursuing medicine, as a profession, for reasons stated in a letter, which Mr. Lowell prints. [L. p. 132.] He came home, in 1827, and was informed that he had \$20,000 of his own to live upon. If he lived, therefore, *in fact*, as Mr. Lowell asserts, *at the expense of the estate*, it was only because he was misinformed and misled, as to the state of his own property, by the brother, who had it in his keeping, and who, alone, knew its amount, if any body did. But he in fact lived, as the other unmarried members of the family lived, with his mother ; whose house was, by her desire, the common home of all her unmarried children. At whose expense they all, in reality, lived, depends upon

accounts, which Mr. J. Wright Boott never stated, nor in fact kept. They have, in truth, never been stated to this day ; for, as to the account of 1844,—except for the purpose of furnishing a form, under which Mr. J. Wright Boott might, by consent, be discharged,—I shall show that it was equivalent to no account at all. The property of all the family, however, was in his hands ; and their unbounded confidence in him allowed it to rest there, without account. Every child of Mrs. Boott was given to understand, that \$20,000 apiece was to come from it as a present inheritance. Mr. William Boott was perfectly justified, therefore, upon the information he had, in living as he did, and cannot be held accountable to any man, certainly not to Mr. Lowell, for having done so. He, however, repeatedly expressed his desire to enter into business. In this, he received no encouragement from his eldest brother. Such was my understanding at the time. But, after the declaration, which amounted to a confession, extorted in the manner above stated, from Mr. J. Wright Boott, of his inability to account for the \$20,000, which Mr. William Boott had been told was his, he embraced the earliest opportunity to take up such a pursuit as he thought himself qualified to engage in ; and, after a previous short engagement in a mercantile agency, he went, as is well known, into the employment of one of the principal corporations at Lowell, on a handsome salary, much beyond the wants of a single man, and he continued in that employment for a number of years, and until that branch of the company's business was brought to a close, sometime after the death of Mr. J. Wright Boott.

Besides this, it should be remembered, that, when his brother's misfortunes became partially known in the family, (although he had no idea of the extent to which the family property was implicated,) he freely joined in the release of 1833, by which all the heirs in this country, who then had an interest in the estate, hoping to relieve Mr. J. Wright Boott from the depression, under which he laboured, discharged him from all legal accountability to them for any thing beyond the annuity funds. In doing so, Mr. William Boott was

much the largest contributor to that object; since every other heir had already received \$10,000, at least, on account of his patrimony, and some had received the full \$20,000, to which they were entitled, as I think the sequel will show. This was an act of generosity, which gave him a right to rely upon his brother's honour, (a reliance, which, I doubt not, he esteemed perfectly safe, so long as that brother was in his right mind,) that he should not be allowed to suffer by it, further than the necessity of the case might imperatively require; and my belief is, that he had no idea, until he got it from me, at a later period, of the extent, to which his own and the family property had been lost, beyond all hope of recovery.

The foregoing facts were well known to me, and I believe they were to Mr. Lowell, at the time of their occurrence. At any rate, what reasonable excuse has Mr. Lowell for the unfounded imputations on general character, which he has thus wantonly hazarded? I am no representative of Mr. William Boott, it is true; but I feel bound to defend him, so far as facts go within my previous knowledge, against an attack equally uncalled for and unmerited, when the only pretext for it is my pamphlet, to which he contributed nothing, except his own testimony to his brother's insanity. He believed that, as I did, to be the sole cause of all the troubles in the family, and the only excuse for conduct, which will presently appear, I think, to have been otherwise utterly unaccountable. Did that belief of Mr. William Boott,—or his acting upon it,—or his permitting me to publish, in his defence, as well as mine, against current calumnies, a statement of some of the facts, on which his belief was founded,—afford the slightest excuse to Mr. Lowell for publishing these personal detractions, on subjects never put in issue by me, and concerning the character of a gentleman, who, whatever his sentiments may have been, had *published nothing against* Mr. Lowell? Mr. Lowell, now, *publishes for him*, his confidential remarks to his brother, Dr. Boott, of London. Some of them may have been far from agreeable to Mr. Lowell. But do these private communications between brothers, upon their own

family affairs, afford the slightest excuse for this public attack?

Finally, what shall we say to Mr. Lowell's modest conclusion on this head? It is in the following words:—

"There can be no reasonable doubt, that he [Mr. William Boott] has received more than any other one of the heirs from the common property." [L. p. 62.]

More than any other one!—Not even excepting Mr. J. Wright Boott! Such is the extravagant pretence, which Mr. Lowell ventures to put forth in terms of positive assertion. I think it will be an effective answer to show, as I shall, that Mr. J. Wright Boott, after the entire loss of his own property, to say nothing of that of brothers and sisters, lived, for fifteen years, in the family mansion, without any income of his own, or other means of support than the remaining family property in his hands, including his mother's income, and paid, besides, within that time, in principal and interest, at least \$60,000 of either the estate's money, or his mother's income, in discharge of his private debts, *to Mr. Lowell himself!*

CHAPTER XXI.

THE MAIN QUESTION OF THE ACCOUNT. MR. BOOTT'S MEMORANDUM OF 1830. ITS VERITY PROVED BY THE "REPLY."

It is time to proceed to the main question of this probate account.

Was there, in truth, at that date, a cash balance of \$25,000 due to Mr. Boott, and chargeable either upon the property held by him, nominally, as executor, or upon the general

estate? Was there not, on the contrary, a large balance due from him?

These questions arise, it must be remembered, without regard to the effect of the release, signed by most of the heirs in 1833. Until the reading of Mr. Lowell's "Reply," I had always supposed that this release, discharging Mr. Boott from all legal accountability to the heirs, who signed it, except for the reversionary funds held under the special trusts of the will, was intended to be relied upon in proof of the sufficiency of the account; or rather as a legal dispensation from all proof or inquiry, concerning any property, which might have come to the executor's hands, other than he is therein charged with. That this was my understanding, at the time of the negotiation and compromise respecting it, appears by the following passage, in the letter before mentioned, from Mrs. Brooks to her mother, written at that period:—

"Mr. Boott has, moreover, *taken advantage of our discharge*, given him at a time of great pecuniary embarrassment, as an act of kindness and not one of justice, *to bring in his accounts in such a way, as to make it appear as if the estate was in debt to him \$25,000*, just the amount of his private debt to Mr. Lowell," &c. [B. App. p. 49.]

This letter, it will be remembered, was put into Mr. Lowell's hands; for Mrs. Brooks had said in it to her mother, "You are at liberty to make what use you choose of my letter. Write to Mr. Lowell, and ask him, as a man of honour, if it is not all true." [B. App. p. 49.] Under that authority, Mrs. Boott sent the letter to Mr. Lowell. He admits its receipt. [L. p. 205.] He was, therefore, aware that we understood this form of the account to have been founded on the supposed effect of the discharge. Yet, if that were an error, as he now says it was, and the account were really intended to embrace all receipts and payments during the whole executorship, unaffected by the discharge of 1833, why did not Mr. Lowell, being thus informed of our understanding to the contrary, disabuse us on that point?—and why did he not, then, vouchsafe the remarkable explanation, which he now gives? Would he not have done so, had it then occurred to him? How

much of misunderstanding and unhappiness, all round, might have been avoided, if a true explanation could then have been made, that would have shown to me the grievous mistake, under which, according to Mr. Lowell, I must all along have laboured !

However that may be, we have, now, no choice in the matter. The "Reply" insists, that the account is literally correct, and that Mr. Boott repudiated the idea of availing himself of that discharge. "Knowing," says Mr. Lowell, "that Mr. Boott had received a discharge in full, which would be a complete bar against all demands, I asked him why he did not commence his accounts from the date of that discharge. He answered ; 'No, Mr. Lowell ; I am determined to begin from the beginning, and show that the estate has not been wasted in my hands.'" [L. p. 31.] Accordingly, although Mr. Lowell thinks the position of the accounting party would have been perfectly impregnable, (which I shall presently consider,) if he had stated an account beginning at the date of the release, he says that Mr. Boott, being charged "with having mismanaged and wasted the estate, a mere technical immunity would not suit his lofty spirit ; his honour was implicated, and it was dearer to him than life. He chivalrously threw aside the ægis of his discharge. He tendered a full account of his stewardship. He defied his assailants to the proof," &c. [L. p. 206.] The meaning of all which, in plain and simple English, is, that the account is declared, by Mr. Lowell, to have been intended, by Mr. Boott, for a full and complete summary, as upon its face it purports to be, of all his receipts and payments, throughout the entire term of his executorship, and consequently is to be considered and dealt with precisely as if no release had ever been given to him by the heirs.

It is said, plausibly enough, that "to impugn these accounts,"—that is, so far as to demonstrate some error material to the general result,—it must be shown, "either that Mr. Boott received more, or that he paid away less, than is stated in the account." [L. p. 45.] That, however, plausible as it may seem, is by no means the whole question. Another,

equally important, is, at what *time* the executor's cash balance is to be *struck* and deemed to have been *invested*, for account of the estate, in the property then held by Mr. Boott in his own private name? Or, of all the property held by him at any time under his own name, what *portions*, if any, are to be considered as *original investments for the estate*, and what for himself? The form, in which Mr. Lowell states the question, adroitly evades and shuts out those branches of inquiry, which, of themselves, when truly answered, will be found decisive against the pretended cash balance of the probate account.

But that I am under the burden, as Mr. Lowell contends, of re-forming the account, or of showing, exactly, how the error has arisen, and in what it consists, I deny; at least, until Mr. Lowell has first put me in possession of "all the documents," from which it was made up. I deny that the burden, as it originally stood, is shifted in the issue between *us*. If, I repeat, on a hearing in the probate court, Mr. Boott would have been bound to prove the particulars, and to exhibit his evidence of the facts stated, Mr. Lowell is equally bound now to do so, upon the new issue, which his assertions, founded upon the assumed substantial accuracy of the account, and directed against me on that basis, have raised. He chooses to exhibit nothing, however; and, yet, has the assurance to call on me, either to prove the reception by Mr. Boott of some particular sum, which the account does not state, or else to prove that he had paid away less, in the whole, than it does state. He shelters himself from the production of documents, except so far as he finds it for his interest to produce them, under the plea that the formal decree of the probate court, allowing the account, under a previous agreement of the parties to permit it to pass without question, dispenses with all vouchers and further inquiries, now that its reality has come into question, upon *his allegation* that it was a *good proveable account*. If that were so, the account, so passed, would simply prove itself, and it would be quite absurd to be talking about burden of proof. If he means, as he sometimes says, that the affair of the account is concluded, let him rest

upon that. If not, and other proofs may now be gone into, what can be more ridiculous than to insist that the burden is on me to produce them, when "all the documents, from which the account was made up," are in his own possession! He expressly refers to materials furnished by Mr. Boott, and to the books of Boott & Lowell, as the sources, from which he drew this exhibit. [L. pp. 30, 31.] But he carefully locks up all these books and papers, and then, with an air of confident defiance, cries out, Now, prove the errors and omissions, if you can!

With this disadvantage, I, nevertheless, proceed to the inquiry, protesting, by the way, against Mr. Lowell's doctrine of burden of proof, but admitting that *one* important problem to be solved, on the question of mismanagement, though by no means the only one, is, whether the executor has either charged himself with too little money received, or credited himself with too much as paid away. I pass by, for the present, the great item of near \$275,000, set down for income, said to have been both received and paid,—not as immaterial, but—because it stands on both sides of the account ; and if it all arose from the investment of the widow's trust fund, as the account supposes, it belonged to her, and, whether really paid to her or not, would not affect the final cash balance, in which the heirs were, directly, concerned. Supposing, then, all income and interest of moneys to have been properly disposed of, is it a fact, that Mr. Boott had received, as executor, no more than \$186,000 of moneyed capital from his father's estate, and that he had distributed \$90,000 of it equally among the heirs?

The latter branch of the inquiry, which respects, more particularly, Mr. William Boott's portion, has already been discussed. The payment of \$10,000 to him, either in full, or on account, of his distributive share, I deny, for reasons already stated. The payment, in some form or other, of at least that sum, to all the other heirs, I admit ; and inequalities of payment, beyond the \$10,000, depend upon first establishing the fact that there was more to be distributed.

The main question, then, turns upon the other side of the

account, and is embraced in two items only,—namely, the item of nearly \$116,700 debited as received prior to May 11, 1818, in part of the testator's interest in the firm, of which he was a partner, and the item of nearly \$69,300 debited as received, at some date not given, from the firm of Boott & Lowell,—a firm, which did not exist in the testator's lifetime, and in which his estate had no legitimate concern. Was the executor justly chargeable for no more than this? Was this *all* the property, which should have remained after a just and legal settlement of the father's estate, except his mansion-house, and other specific items of the inventory?

Mr. Lowell has the justice to concede, (and I rather think, it is a singular instance of his conceding any thing not for his own advantage,) that *direct* proof, from me, of what the executor had received, (all the books and papers, that exist, being in Mr. Lowell's own hands,) was, from the nature of the case, impracticable. [L. p. 45.] The inquiry involved the history of several firms, and of many private transactions of Mr. J. Wright Boott, either unknown to me, or known only in the most general way. Since all his investments, whether intended to be for the estate, or intended to be for himself, had, for a long series of years, been made in his own sole name, with nothing to distinguish the one from the other, a part of the inquiry was, what private fortune of his own Mr. J. Wright Boott had, to mix in these investments ; what the aggregate of the investments at any time was known to have amounted to ; and what losses he had met with in his private business, or in business, which he had no right to undertake on account of the estate, although its funds may have been in fact borrowed and used for that business.

No executor's account having ever been settled, or stated, except the account of 1818, which admitted a realization of cash, within sixteen months from the testator's death, out of his interest in the first firm of Kirk Boott & Sons, to the amount of about \$116,700, and no private account of his subsequent transactions, either as executor or on his own behalf, being open to me, in order to show that more had, afterwards,

come to the executor than the \$69,300 admitted to have been received through Boott & Lowell, I could, of course, only adduce circumstantial evidence. But the circumstances shown, which I shall presently allude to, were such as to call loudly for explanation, and, if not satisfactorily explained, to leave the conclusion inevitable, that the account had omitted some large sum, for which the executor was properly chargeable. Mr. Lowell attempts to explain these circumstances, consistently with the truth and completeness of the account, and to adduce other circumstances in corroboration of it. These will presently be examined ; and I think the remarkable fact will appear, that he is most free to explain those transactions, of which he has least personal knowledge and no evidence, and that he discloses least of those, which he is able to state precisely, and in full, with proper proofs, if he would.

The first circumstance, to which I shall call attention, is a written statement, by Mr. J. Wright Boott, of his own property, and that of the family in his hands, as it stood in 1830. This is a good starting point ; because the information comes, directly, from Mr. J. Wright Boott himself, and is in his own hand-writing. Such a document is irresistible, so far as it goes ; and its statements, except in the accuracy of the valuation, are confirmed, in every particular, by extrinsic evidence. The paper does not tell us, it is true, what Mr. J. Wright Boott's own property originally was, nor what that of his father's estate was, nor how much of either had wholly disappeared before that time, nor in what way any part of it had gone. Upon these points, we are still left to inference from other sources. But, it shows *all* the property, whether of his own or his father's, *then left* in his hands, and in what it was invested. The particulars of this property we are enabled to trace, thenceforward ; and we know, exactly, what became of every item. His state of indebtedness, at that time, is also matter of positive proof; and thus, by connexion with other facts, which are beyond question, we shall be brought to see, with certainty, the fallacy of the pretended cash balance of \$25,000, claimed as due to the executor in 1844, even if we do not see the exact amount, for which

he was then justly chargeable in that capacity, beyond the receipts mentioned in his account.

To this question,—the balance claimed,—I shall first address myself.

The paper, above referred to, was handed to me by Mr. Boott himself, near the end of August, 1830, for the purpose of showing the total assets in his hands, except what he held for account of the family of his cousin, the late Mr. Francis Boott. That paper I now reprint, with the explanation formerly given of it :—

MR BOOTT'S MEMORANDUM.

" Mill Dam,	.	.	.	.	\$70,000	
Store,	.	.	.	.	15,000	
Note, Wells & Lilly,	.	.	.	.	14,000	
Sturgis,	.	.	.	.	42,000	21,000
J. A. Lowell,	.	.	.	.	50,000	30,000
Other Shares,	.	.	.	.	19,000	
Stable,	.	.	.	.	3,000	
						\$213,000 "

" This requires some explanation to make it intelligible. The first column of figures is supposed to represent property ; the second, certain debts, for which a portion of it was pledged. The first item signifies the amount, which Mr. Wright Boott had at that time invested in the Mill Dam Foundry, or in the business there carried on by him in partnership with Messrs. Lyman & Ralston. The second item is a store in State-street, which was left him by his father, as a particular bounty, distinct from his share in the residue of the estate. The third item was a note of Messrs. Wells & Lilly, formerly booksellers in this city, whose affairs were in process of liquidation. Mr. Wells was the brother-in-law before mentioned. The note was payable to Mr. Wright Boott personally, and was for money lent to aid them in their business. It was, in truth, the note of Robert Lilly, the liquidator of that concern, though called, in the memorandum, the note of Wells & Lilly. The next three items were shares of manufacturing stock, viz. seventy-two shares in the Merrimack Manufacturing Company, at Lowell, and thirty-nine shares in the Boston Manufacturing Company, at Waltham. Forty-two of the former were pledged to the Hon. William Sturgis, or to J. P. Cushing, Esq., for whom he acted, as collateral security to Mr. Wright Boott's note for \$21,000. Twenty-five of the former, and twenty-five of the latter were pledged to Mr. J. A. Lowell, as collateral security to another note of Mr. Wright Boott, for \$30,000. The remaining nineteen shares continued unpledged. The last item was a stable, in rear of the family mansion-

house estate, which he had purchased from Mr. William Dehon a few years before." [B. p. 37.]

Mr. Lowell's remark upon this is :—

"On the strength of a mere pencil memorandum, unsigned and without date or caption, and relying on his memory after a lapse of sixteen years to interpret that memorandum, he [Brooks] undertakes to put us in possession of the *whole state* of Mr. Boott's property and liabilities, and to found upon these *reminiscences* charges of utter insolvency and of a reckless and unprincipled use of the property of others ; charges deliberately made after full time for consideration, against the memory of his wife's brother." [L. p. 79, 80.]

For the purpose of persuading his readers that no faith can be placed in this memorandum, and my exposition of it, Mr. Lowell, thereupon, proceeds "to show what Mr. Brooks's reminiscences are worth, after such a lapse of time," by the instance of my supposed mistake in estimating the difference, between simple and compound interest, in Mr. Boott's guardianship accounts, at \$10,000, instead of \$2500, at which Mr. Lowell, by a most ludicrous mistake of his own, supposes he had himself, formerly, estimated it. His unfortunate series of blunders on this head I have already pointed out. [Ante, Ch. 6.] Let us look, then, to his present comments on the memorandum.

On the strength of that paper, every reader of my former pamphlet will see, that I undertook to put the reader in possession of the state of the whole *property* in Mr. Boott's hands, as represented by himself, and nothing more. His *liabilities*, except so far as a portion of this property was specifically pledged for them to Messrs. Sturgis and Lowell, are not named, nor alluded to, in the memorandum, nor did I, as Mr. Lowell asserts, rely upon it for them. I expressly referred the reader to other sources. But, as to my interpretation of the paper,—through which Mr. Lowell endeavours, thus, to shake its credit, as a thing, which rests, entirely, for its effect, upon a remarkably poor memory of mine, after the lapse of sixteen years,—it so happens, that there is *not an item* of it, which *Mr. Lowell himself* does not elsewhere *admit*, or incidentally *prove*.

What would he have the reader believe that he means to deny or question? That it is a list and valuation of property, made by Mr. J. Wright Boott himself, for some purpose, is apparent upon its face. The time and occasion of its being made are, besides, apparent enough from Mr. Kirk Boott's letters, printed formerly in my Appendix, and which I shall presently reprint. As to the items of real estate, under the heads of "Mill Dam," "Store," and "Stable," my explanation only went to fix their identity with the iron foundry at the Mill Dam, the store devised to Mr. Boott by his father, and the stable bought by him in rear of the family mansion. Does Mr. Lowell dispute the identification? The records of the Registry of Deeds, the will of Mr. Boott, senior, and the probate account of 1844, prove every one of these. And so does Mr. Lowell himself.

In his general narrative of affairs, he thus identifies the first item, just as I did:—"Being, in 1826, out of business, in consequence of the breaking up of our copartnership, and having naturally a strong mechanical turn, he [Mr. Boott] entered into the business of casting iron, *at a foundery which he erected for that purpose at the Mill Dam.*" [L. p. 75.] In commenting, afterwards, on one of my estimates of Mr. Boott's pecuniary position, he says, "The Mill Dam property, *Mr. Boott's half of which had cost \$57,000 independent of advances of about \$13,000 more,* is also deducted in full, as unavailable." [L. p. 90.] These sums, added, exactly correspond with the first item of the memorandum, "Mill Dam, \$70,000;" and the statement confirms what I had said of it, viz. that the \$70,000 was intended to represent the amount of cash, which Mr. Boott had actually paid into that concern. This extract also serves to show Mr. Lowell's more intimate knowledge than mine of the manner, in which that sum was made up.

Again, speaking of a supposed possible loss of papers, he refers to "the fire that destroyed *Mr. Boott's store* in April, 1825." [L. p. 59.] It was rebuilt, and he tells us that, at the time of the memorandum in question, "*the store in State-street was for sale;*" [L. p. 87.] and again, "*the store*

he afterwards sold for \$16,000 ;" [L. p. 86.] thus showing, his intimate knowledge of that item, and confirming my "reminiscences," where I had nothing but memory to guide me, in stating that "the store in State-street Mr. Wright Boott had been enabled to sell for \$1000 *more* than it had been estimated at in his memorandum." [B. p. 46.]

So, of the remaining item of real estate, Mr. Lowell says, "The *stable* he had recently bought for the benefit of the estate, supposing, *as he himself informed me*, that he thereby acquired a right of way into Bowdoin-street." [L. p. 86.]

In respect to Wells & Lilly's note, my interpretation of that item, it has been seen, went only to explain who Wells & Lilly were, how the debt arose, and that it was, in truth, the note of Robert Lilly, given as liquidator of their concerns. This item was also proved by the deed of trust, under which I afterwards held it. In that paper it was described as "a certain promissory note given to said Boott by Robert Lilly, for the sum of \$14,000, whereon has been paid the sum of \$966 61." [B. App. p. 23.] But Mr. Lowell proves this item too,—and proves that he knew more about it than I had stated,—for he says, "The debt of Wells & Lilly was secured by a mortgage of personal property, and was, a few years later, paid in full ;" [L. p. 86.] and again, "The debt of Wells & Lilly was one which had grown out of advances made by Mr. Boott, senior, to his son-in-law Mr. Wells, and subsequent advances by Mr. Wright Boott himself." [L. p. 87.] These facts may be correct ; but they had not been stated by me.

We have now disposed of the whole memorandum, except the three items, "Sturgis," "J. A. Lowell," "Other Shares," —the only parts of the paper, which had much ambiguity about them to explain. It is clear that the last relates to *shares of something*, and since they are spoken of as *other* shares, it is equally clear that the preceding items must have related to shares also. I explained them all to mean shares in the Boston and Merrimack Manufacturing Companies, rated at par, one hundred and eleven in the whole, of which nineteen were unpledged, and ninety-two were pledged to

Mr. Sturgis and Mr. Lowell; and I undertook to state how many shares there were of each kind of stock, and how many of each were held by the respective pledgees, and that the second column of the memorandum, containing the figures "21,000," and "30,000," expressed the amount of the debts, for which they were held. I further explained, that there were some other shares in the same stocks, held by Mr. Boott at the time, in his own name, but which he considered to belong to his account as guardian of the children, and trustee for the widow, of Mr. Francis Boott, and which he therefore did not put into this memorandum. [B. p. 39.]

If this were all mere "reminiscence," was it not, nevertheless, to a fraction, true? The certified transcripts, which I printed, from the stock ledgers of these two companies, together with the trust deed, and the probate account of 1844, in which these same shares reappear, (less *one* which had gone to another account, as the record of transfers shows,) proved the facts as I stated them, and proved that no other shares in these companies were held at that time by Mr. Boott, excepting those, which he, soon after, transferred to his account as guardian, or trustee, for the members of Mr. F. Boott's family. But, if there were any deficiencies in my proof, Mr. Lowell himself has supplied them.

As to the thirty-nine shares of the Boston Manufacturing Company, I ventured to inquire, why, in the probate account, some were put at the original subscription price, and some at a higher price. Mr. Lowell, in a passage too long for citation, [L. p. 68-71] enters into a laboured explanation, which purports to account for the whole thirty-nine shares at the prices charged, and shows, that certain other shares of the same stock, originally subscribed for, (concerning which I had been misled, because they were all subscribed for and taken by Mr. Boott in his own name,) belonged to his account as guardian and trustee for Mr. F. Boott's family, and not to his father's estate—thus incidentally proving so much of the memorandum, and corroborating what I had said re-

specting those shares, which did not appear in it, and showing how well acquainted he is with all the facts.

So, in respect to *all* the shares of manufacturing stock, which my interpretation ascribed to that paper, as standing under the heads of "Sturgis," "J. A. Lowell," and "Other Shares," rated together at \$111,000, Mr. Lowell, commenting upon Mr. Boott's assets, and not then pretending to deny my interpretation, says, "*the manufacturing stock had cost him \$9000 more than the par value, at which it is put down in the memorandum,* and he had clearly a right to charge it to the trust fund at its cost." [L. p. 86.] He, accordingly, adds that sum to the footing of the memorandum, in his estimate of resources,—thus plainly admitting all that remained to be admitted on the *debit* side of that paper, and showing, again, his intimate acquaintance with the facts, by stating the actual cost of that stock to Mr. Boott, which was wholly unknown to me.

On the very next page [L. p. 87] he inquires, "and what were his debts? He owed Mr. Wm. Sturgis, for Mr. Cushing, \$21,000. He owed me for the estate of Jonathan Amory \$30,000"; and these are the precise sums set against those names on the *credit* side of the paper.

To complete the proof, from Mr. Lowell's own lips, it only remains to show, that forty-two of the Merrimack shares were pledged for that debt to Mr. Sturgis, and twenty-five of each stock to Mr. Lowell for *his* debt. This we gather from himself, in detached sentences, as follows:—Speaking of Mr. Boott's pecuniary position, he says, "He had temporarily borrowed, *on a pledge of stocks*, \$51,000." [L. p. 88.] In endeavouring to exculpate himself from too intimate a connexion with some of the subjects of inquiry, he says, "I had had no personal dealings with Mr. Wright Boott, except that I had lent to him, a few years before, a large sum of money, from the trust funds in my hands, belonging to the estate of Jonathan Amory, *on a pledge of manufacturing stock.*" [L. p. 29.] What the sum was he states at p. 87, as above shown. In endeavouring to convict me of a mistake, concerning Mr. Boott's having paid off his debt to

Mr. Sturgis, (I shall have a word more to say on that subject in due time,) he says, "I paid the \$21,000 to Mr. Sturgis, and took the debt to my account as trustee, at the request of Mr. Boott, who preferred to be indebted to me alone. The effect of the transaction was to relieve *one half* of the stock which had been pledged to Mr. Sturgis, as the shares which I already held, *with the twenty-one shares transferred to me by him*, amply secured me for the whole of my advances." [L. p. 96.] So, in endeavouring to give a different version from mine (about which I shall also have occasion to speak by-and-by,) of a certain agreement mentioned by me, whereby those stocks, which he originally held in pledge from Mr. Boott in his private name, were transferred by Mr. Lowell to Mr. Boott, *as executor*, and then re-pledged by Mr. Boott, in that capacity, to Mr. Lowell, he again admits all I had stated respecting them in my interpretation of the memorandum. [L. p. 41.] And when he desires to explain how the pretended cash balance of \$25,000 arose, he admits that he re-conveyed these same shares, once more, to Mr. Boott *as executor*, on the day of the presentation of the accounts. [L. p. 42.] The *number*, so re-conveyed, is fixed by the transcript from the record of transfers.

In short, without multiplying instances, wherever the immediate occasion requires him, in the course of his "Reply," to state the *same facts*, he states them *as of his own knowledge*, in precise accordance with the memorandum as explained by me, and proves, *singulatim*, every particle of its contents, and of my explanation of them, as a statement of all the assets held by Mr. Boott, for his own account and the account of the estate, at the date, which I give to the paper; and, on the other hand, although the course of his argument rendered it most imperative upon him to show for Mr. Boott as much of private property as possible, and although the intimacy of his acquaintance with Mr. Boott's affairs displays itself at every turn, he does not pretend, in any page of his book, to point out, or to suggest that there was, to be pointed out, *a single other item* of property then in Mr. Boott's immediate possession, (reversions I shall speak of presently,)

which this memorandum does not include, except (and these are my exceptions, not Mr. Lowell's,) mere articles of personal use, and the stocks, which he held for the F. Boott family.

I have, then, only two inquiries to put to the reader.

First, May we not safely assume, that this was indeed *all* the property Mr. Boott then held, (except as above excepted,) and that my interpretation of the paper, so far as it does not explain itself, was literally and perfectly correct?

Secondly, Is it consistent with that fairness and frankness, which the public have a right to expect from Mr. Lowell, in such a communication, that, when it serves his purpose to weaken the credit of the memorandum, he should not scruple to suggest, that the paper derives its value solely from my "reminiscences," and that these are not to be depended on, notwithstanding he himself asserts, with a greater minuteness of knowledge than I could boast of, every fact, which it states, or which I had stated respecting it, when it serves his purpose to avail himself of those facts in his own vindication, or in support of his argument?

If these inquiries should be answered as I think they must be, the reader will have arrived at one point, that he may safely rest upon. We shall soon see the inevitable consequences.

C H A P T E R XXII.

MR. BOOTT'S DEBTS. HIS LIABILITY FOR DEBTS CONTRACTED IN THE NAME OF LYMAN & RALSTON.

I plant myself on the memorandum, above printed from the original in Mr. Boott's hand-writing, as a document, which, in respect to the truth and completeness of its contents, is now proved by Mr. Lowell, in every particular,

precisely as I had stated it in my former pamphlet. It stands wholly independent now, if it did not originally, of my memory for explanation. It stands proved, and in effect confessed, to be a true exhibit of all the property, in present possession, held by Mr. Boott, at the time it was made, out of which the claims of his father's estate and his own debts were to be satisfied.

The next inquiry is, what were his debts, exclusive of any thing he may have owed to his brothers and sisters, as heirs of his father's estate, or to the trusts under his father's will? I stated them formerly, [B. p. 39.] from his own verbal information accompanying the memorandum, thus :—

An uninvested cash balance, due on his guardianship accounts for the minor children of Mr. Francis Boott, estimated by him at - - - - -	\$20,000
His own notes to Messrs. Sturgis and Lowell, -	51,000
His endorsements of certain paper of Lyman & Ralston, then pressing, - - - - -	30,000

	101,000

To this I added,—not as resting on any one particular statement of his, but as my own inference, from all I learnt on the subject, then and afterwards,—his liability for debts of Lyman & Ralston, beyond the \$30,000 above mentioned, estimated by me at - - - - -	50,000

	151,000

Now what says Mr. Lowell?

“ He was indebted on his guardianship accounts about \$20,000, and had endorsed the paper of Lyman & Ralston to the amount of \$30,000, for stock purchased for the iron foundery.” [L. p. 77.] “ He owed Mr. William Sturgis, for Mr. Cushing, \$21,000 ; he owed me, for the estate of Jonathan Amory, \$30,000.” [L. p. 87.] Thus the “ Reply” distinctly admits each item of my specification, except the last.

How is it with that?

Mr. Lowell does not question its *amount*. I rested that upon a letter of Mr. Kirk Boott, [B. App. p. 19.] in which he said, "He [Mr. Ralston,] admits that the debts of L. & R. are \$80,000 ;—and do you not think it probable that they will turn out more?" I certainly did ; and so did Mr. Kirk Boott. But I took the minimum for my statement, and interpreted that to mean, not \$80,000 *besides* the \$30,000, which Mr. J. Wright Boott had specially endorsed, but \$80,000 *including* the endorsements ; and I set down the addition of debt, beyond the endorsements, at \$50,000 only. This certainly was not to be complained of. But Mr. Lowell's ground of complaint is, that, for this sum, whether more or less, Mr. Boott "was no more liable than Mr. Brooks, or myself," [L. p. 90.] because, he says, on the alleged authority of Mr. Ralston's recent statement to him, "Mr. Boott never was a partner of that house, nor liable for their debts, except so far as he endorsed them." [L. p. 89.]

The explanation given is, that Messrs. William Lyman and Robert Ralston, Jr., brothers-in-law of Mr. Boott, were commission merchants, doing business, as partners, at Philadelphia and Boston ; "in the former place under the style of Ralston & Lyman, and in the latter under that of Lyman & Ralston ;" and that the business of the Mill Dam Foundry was a separate concern, for the casting of iron, in which, only, Mr. Boott was jointly interested with them. [L. p. 76.]

On this state of facts, Mr. Lowell thinks it certain, and asserts with his usual positiveness, again and again, that there was no liability of Mr. Boott for the debts of Lyman & Ralston, or Ralston & Lyman, except so far as he became their endorser ; [L. p. 76. 89., &c.] and he accordingly inveighs against me, as a wanton calumniator of the memory of Mr. Boott, for having imputed to him a pecuniary liability, which Mr. Lowell says, did not belong to him. He thinks this a criminal negligence, at least,—especially with the letters of Mr. Kirk Boott in my hands, which, he says, so far from supporting my "extravagant statements," on the contrary, "expressly contradict him [Brooks] on the point of Mr. Boott's

liability for the \$50,000 of Lyman & Ralston's private debts." [L. p. 92.]

Now I am by no means satisfied, on Mr. Lowell's dictatorial assertion, that I committed any error here. It contradicts, too strongly, my whole current of impressions formed at the time. I will not be quite so absolute as Mr. Lowell, in affirming that Mr. Boott *actually was* liable for the *whole* of these debts. I had no doubt of it when I made the foregoing statement; and I believe it now. But, when it is so positively denied, and, as is said, on the authority of Mr. Ralston, I agree that it is a point to pause at.

In these recent controversies, involving Mr. Boott's sanity, and the validity of his will, of which Mrs. Ralston is the residuary legatee, Mr. Ralston's pecuniary interest happens to place him on that side of the cause, which Mr. Lowell has undertaken to advocate. But that, I am sure would not affect his statement of a fact within his personal knowledge. The present, however, is not properly a question of fact; it is one of opinion, in a matter of law, depending on *many* facts, concerning which we have not the benefit of Mr. Ralston's statement. It would be foolish, in me, to pretend *certainty*, in a mere legal conclusion, without more exact knowledge, or present recollection, of *all* the facts than I claim to possess at this moment. But that, of which I am certain, is, that both Mr. Kirk Boott and myself, upon the knowledge we had at the time, apprehended the full extent of liability above stated, and apprehended it so seriously, that we both advised and acted upon that idea. And since Mr. Lowell ventures to assert, that Mr. Kirk Boott's letters do not countenance my "extravagant statements," I shall presently give the reader an opportunity to judge of that for himself.

As to the facts now stated by Mr. Lowell, it is true, that Messrs. Lyman & Ralston had been in partnership, as commission merchants, at Philadelphia and Boston, and I believe under the different styles mentioned, for some considerable time before the project of the Mill Dam Foundry was formed. It is also true, that their commission house continued to exist

after that scheme was entered into. It is further true, that the business done at the foundry, for the joint account of Mr. Boott, Mr. Lyman, and Mr. Ralston, was the casting of iron; but this involved, of course, purchases, sales, and various contracts, made elsewhere, with the use of either large capital, or large credit. All that business, of the joint concern, not done *at* the foundry, was transacted, I believe entirely, in the name of Lyman & Ralston at Boston, and of Ralston & Lyman at Philadelphia. Mr. Boott's *name* did not appear, I believe, in any of these contracts.

I think it probable, too, that Mr. Boott had no interest in the mere commission business of Messrs. Lyman & Ralston, if there was any, transacted for *other parties*. That, with the difference of firms, may be what Mr. Ralston relies upon, if he says Mr. Boott was not a partner in their house; its ostensible partners not considering him interested in the peculiar profits and losses of their commission business. But my belief, derived from the representations, at the time, of both Mr. Lyman and Mr. Ralston, is, that their capital and means had, gradually, become so completely absorbed in the business of the foundry and its incidents, that, at the time of which I speak, their other business was, and long had been, nearly nominal; that their principal, if not their sole agency, as commission merchants, was, then, in the business of the Mill Dam Foundry, and in business closely connected with it, in which Messrs. Boott, Lyman, and Ralston were all jointly interested; that the debts, growing out of that business, though contracted in the *name* of Lyman & Ralston, or of Ralston & Lyman, were for the joint use and benefit of themselves and Mr. Boott; and that Mr. Boott had, consequently, made himself personally liable for those debts, whether he specially endorsed them or not.

One difficulty about a settlement among these parties, if I remember rightly, was, that the affairs of the two firms, of which Messrs. Lyman & Ralston were nominally the sole members, and the affairs of the foundry, which embraced both them and Mr. Boott, and which were transacted through one or both of these firms, were so intermingled and compli-

cated, that it seemed impossible, thoroughly, to extricate the one from the other. Under the arrangements made among the parties themselves, it may be perfectly true, that Mr. Boott was not considered by his associates to be a partner in all their dealings; and in consequence of disproportionate advances made by him on the joint account, it may be also true, that they were bound to hold him harmless, to the extent of their own property, against debts contracted in their own name, even when they grew, distinctly, out of operations for the foundry. But, in such cases, creditors would not be bound by the private agreements of the parties, nor by the components of the particular firm, with which they, nominally, dealt, (since "Lyman & Ralston" was a mere house of agency,) but would have a right to look to Mr. Boott, when discovered, as a partner and principal, by the rules of law, whether his associates considered him so or not; and the apprehension, at the time was, that, unless some arrangement should be made to prevent the failure of Lyman & Ralston, Mr. Boott would be charged by their creditors, not only for his endorsements, which was certain, but also for their other debts, as debts contracted for his use jointly with them, although his name did not appear.

According to my recollection, the parties did not even agree, among themselves, as to the extent to which Mr. Boott *ought*, in justice to his *partners*, to contribute for the liquidation of these debts. Indeed, I shall presently show evidence of it. And although Mr. Kirk Boott and myself looked upon them as debts, which Mr. Lyman and Mr. Ralston ought, under the circumstances, to provide for, *if they could*, we were far from thinking that their creditors would be likely to take the same view, or to abstain, on that account, from asserting their large claims on Mr. Boott. I am quite unable to perceive any thing in Mr. Kirk Boott's letters of the time which contradicts this idea. On the contrary, if they do not any where distinctly assert it, they at least seem to me perfectly consistent with it, throughout. It is true, that he sometimes speaks of these debts, and even of the *endorsed* paper, which Mr. Lowell admits was given for "stock purchased for

the iron foundry ;" [L. p. 77.] as no debts of Mr. J. Wright Boott. But, in these cases, I understand him to be referring only to the private arrangements of the partners, and to the state of accounts among themselves, arising out of their unequal advances in the joint concern, and to particular schemes, then in contemplation, for the raising of money to meet the debts, and to the question, on which of them, as between themselves, that burden ought to fall, and not with any reference to the rights of their creditors.

His first letter to me on the subject, dated September 26, 1830, shows the points, upon which he desired in the outset, to be informed, as appears by the following extract :—

"It did not occur to me to inquire what are the relations of R. & L. and J. W. B. with respect to the works on the Mill Dam. *Are they partners?* In whose name does the *property* stand? Has any *incumbrance* been made? If not, *are there any means of preventing the property from being attached?*" [B. App. p. 16.]

His next, after he had informed himself on some of these points, begins, thus :—

LOWELL, Sept. 29, 1830.

"MY DEAR SIR:

If such a statement as you have recommended can be made up, which I fear J. W. will find almost impossible, it certainly would greatly facilitate the settlement. The truth may be approximated, if not correctly ascertained. The immediate difficulty appears to lay with R. & L., and J. W. B.'s engagements on their account. For, *as they are all partners in as far as the M. D. F. is concerned*, if R. & L. are unable to meet their payments, or get their notes renewed, *there is fear that the whole of this property may be taken by attachment.*" [B. App. p. 16, 17.]

Mr. Lowell himself does not question, but on the contrary, with singular inconsistency, expressly admits, that such an apprehension was entertained. "Both these liabilities," he says, referring to the guardianship accounts and the endorsements, "he could have met from his own resources; but *there was an apprehension that the Mill Dam property might be attached* for the private debts of Lyman & Ralston." [L. p. 77.]

And here it may be material to consider in what manner,

and upon what parties, it was supposed such an attachment might operate. Now this, also, is correctly stated by Mr. Lowell, so far as concerns the Mill Dam property, and so far as he admits the indebtedness of Mr. Boott. He only does not admit the *extent* of the mischief apprehended. His language is,—

“Should this event [the attachment] occur, he might not be able to meet his engagements as endorser *and guardian*. *His father's estate* was implicated in this issue to this extent, that his father was his bondsman, as guardian, at the probate office.” [L. p. 79.]

In other words, if the Mill Dam property were taken, for what Mr. Lowell is pleased to call “the private debts of Lyman & Ralston,” it was feared that Mr. Boott might be unable to pay, not only his endorsements for them, but his own private debt to his wards, which Lyman & Ralston had nothing to do with, and that his father's estate might be compelled to make good that deficiency, so that the loss would ultimately fall on the parties interested in that estate. Upon the same principle, if he were indebted, besides, to his father's estate, so much *more* loss would be likely to fall on these parties.

It may also be material to consider what the Mill Dam property was, and how it was held. It was a large manufacturing establishment, consisting of land, water-power, expensive buildings and water-wheels, and all the machinery used in the processes carried on there, with the usual incidents of such an establishment in full operation. The title of the fixed property was vested in John Wright Boott and William Lyman alone, as the records of the registry of deeds in Norfolk show. I have, besides, among other letters from Mr. Ralston, one written while the negotiation of the mortgage, formerly spoken of, was under consideration, in which he complains of the omission of his name in the title deeds. But it is needless to introduce it for this purpose, since Mr. Lowell himself states that *one half* the property belonged to Mr. Boott, [L. p. 90.] which is true so far as the legal title was concerned. Yet Mr. Kirk Boott writes at the time—“there is fear that the *whole* of this property may be taken

by attachment ;" and Mr. Lowell, as above quoted, admits that it was so apprehended.

Now will Mr. Lowell have the goodness to inform us, *why* it was *apprehended* that *Mr. J. Wright Boott's half* of this property would be taken by attachment, if he were not liable for the debts? In regard to the real estate, the case is clear. The half, though undivided, was *his separate estate*. How was it to be attached for Lyman & Ralston's private debts?—that is, debts due from themselves alone, and not from Mr. Boott? So, in respect to the joint *personal* property, how was *Mr. Boott's* interest in that to be taken away from his own creditors, and given to the *separate* creditors of Lyman & Ralston? Joint liability, involving Mr. Boott, was manifestly understood to be at the bottom of the whole apprehension. And how strange is it, that Mr. Lowell should be so very sure, now, that there was no such liability, admitting, at the same time, that so many intelligent persons (himself, I doubt not, among them) were apprehensive of it, then, while the facts were all fresh before them.

Perhaps he may say, the fear was, because of the *endorsements*, and that Mr. Kirk Boott refers only to them. But Mr. Kirk Boott does not place his apprehension on that ground. He places it, expressly, on the ground of the *partnership*. "For," says he, "*as they are all partners*, in as far as the M. D. F. [Mill Dam Foundry] is concerned, *if R. & L. [Ralston & Lyman]* are unable to *meet their payments*, or to get their notes renewed, *there is fear*," &c. It is manifest, from other passages also, and indeed from the general tenor of his letters,—which are plainly apprehensive of a great ruin, not only to Lyman & Ralston, and to Mr. J. Wright Boott, but to the general family interest in his brother's hands, and, most especially, to his mother's trust fund,—that he was far from considering that the extent of Mr. J. Wright Boott's liability was to be measured by the comparatively small amount of the special endorsements, or even by the value of the Mill Dam property alone; for if Mr. Boott's own property there was in danger of attachment, so was all other property held by him as his own.

It is Mr. Lowell's cue to brighten, as much as possible, what he calls "this dark period of Mr. Boott's life," [L. p. 79.] and, therefore, to pass lightly over the contemporaneous letters of Mr. Kirk Boott. I certainly have no desire to darken it further. I wish only to present the fact in its true aspect, as it was then viewed;—and, perhaps, I did not myself, formerly, make these letters of Mr. Kirk Boott so prominent as I should, when I put them all into an appendix. But I shall have occasion, presently, to introduce them into my text, to illustrate further the apprehended extent of the danger to the family property, and other points in the case. At present, I will only make one or two short extracts.

In the letter last referred to, he says, "Since this unhappy disclosure, I get neither sleep or rest." [B. App. p. 17.] And again he writes, "I feel, that, if left alone by any chance with my mother, that I shall hardly be able to contain my feelings." [B. App. p. 19.] Now those, who had the pleasure to know Mr. Kirk Boott of Lowell, do not need to be informed, that he was not one of those over-sensitive persons, who are liable to be thrown off their balance by a light matter; but a man of uncommon firmness and self-command. Had Mr. J. Wright Boott's position been, what Mr. Lowell represents it, that of a man worth from \$70,000 to \$80,000 in his own right, who had suffered himself to be drawn into an engagement for other people, to the limited amount of \$30,000 only, and that based upon good property and a prosperous business, (for such Mr. Lowell declares to have been the understood condition of the Mill Dam Foundry) I beg to ask, what there was, in that position of affairs, to alarm and agitate, with days of anxiety and sleepless nights, the strong nerves and energetic mind of Mr. Kirk Boott? What was there to excite, in a man of his temperament, intelligence, age, and experience in business, such a tumult of feelings as he could hardly restrain himself from pouring into a mother's ear? It was not fear of unpleasant consequences to his sisters, Mrs. Lyman and Mrs. Ralston, *alone*, (since they must, necessarily, have participated in the misfortune of their husbands,) but, in the event of the failure of Lyman & Ralston,

the fear, which he states, is of the attachment of *Mr. J. Wright Boott's property*, with all its train of disastrous consequences to him and his dependants. Why disastrous to *these dependants*, if Mr. J. Wright Boott's own funds only, and not those of his father's estate, were invested in the iron foundry, and well invested too, as Mr. Lowell says, to the extent of only \$70,000, and if his whole outstanding liability, on that account, was only \$30,000? He might lose more or less of his own investment, but that could hardly bring ruin upon others, if Mr. Lowell's views are correct.

Yet, says Mr. Lowell, "*no bad management* of the foundery business is any where hinted at," by Mr. Kirk Boott. [L. p. 81.] It was a property, "which there is *no pretence* was then considered a *bad investment*." [L. p. 90.] "The foundery was supposed to be doing a *good business*; and their accounts showed a *profit*, which had been applied to the enlargement of the works. This concern *owed no debts*, except one of \$2500 to Col. Thorndike;" [L. p. 78.] for even the \$30,000 of endorsed paper he regards, here, as *not* given for debts of that concern, though he had just said it *was* given "for stock purchased for the iron foundery." [L. p. 77.]

Now it is true, that Mr. Ralston believed, as is often the case with persons of little experience in that kind of business, that they had been making large profits. But, unfortunately, these had always gone "to the enlargement of the works." So they always continued to go, while any paper show of profit lasted, and until the business of Messrs. Lyman & Ralston was finally wound up, with a very heavy debt beyond all the assets, as Mr. Lowell admits. [L. p. 202.] This was some time after Mr. Boott's extrication from the concern; and the fixed property, which, Mr. Lowell says, had cost, in 1830, \$114,000, [L. p. 90.] after remaining in the hands of the Ralston family, for many years, almost, if not quite, unproductive, was sold, at last, as we have seen, in 1847, for \$30,000. [Ante. p. 49.]

Although Mr. Ralston, therefore, at the time now spoken of, may have entertained no doubt, that their business

was really prosperous, and that they were only suffering a temporary embarrassment, for the want of a little ready money, Mr. Kirk Boott did not participate in those opinions ; still less, in Mr. Lowell's present opinion, that the concern owed only \$2500 ! In his letter of October 10, 1830, he says, " Ralston judges favourably of the business on M. D., [Mill Dam] and I confess it looks less desperate on paper than I expected. Still it is an up-hill business *with such a load of debt.*" [B. App. p. 18.] He had heard Mr. Ralston's representations, he had examined his figures, and he could only be brought to confess, that the business looked "*less desperate—on paper*"—than he had expected. But he, manifestly, felt no confidence in it. He trembled at the "*load of debt.*" He wished to see the *accounts* more thoroughly sifted. In a letter, soon after, he asks, "cannot an assignment be made, and kept secret for the present, that would *bar attachment*, at all events *till we see the result of the accounts of the M. D. F.?*" [Mill Dam Foundry.] [B. App. p. 19.]

In another of still later date, as the contents show, he writes :—

"I saw R. R. [Robert Ralston, Jr.] yesterday afternoon, and explained to him, very fully, that the plan he proposed for raising money on the M. D. F. could not be assented to. That in any event, *J. W. B. felt it to be his duty to assign over his property for the security of all his creditors*; and that in so doing, it seemed impossible but that the M. D. F. must be stopped. That however well his statements looked *on paper*, it did appear to me there must be *some fallacy* in them. And that as far as I could see, it was doubtful whether *any profit* had yet been derived from carrying on their works."

* * * * *

"*Some competent person* should make out a *statement of the affairs* of the M. D. F. *If a profit* could be shown, adequate to their support, and to the *gradual liquidation of the debts*, it might be a judicious course ; but, if otherwise, I felt assured that J. W. B. would not consent. To accomplish this, I am to send down Tufts, my clerk, and upon the result we could determine whether this course ought to be adopted," [B. App. p. 21.]

Now Mr. Lowell does not overlook these passages. On the contrary, he expressly refers to them, though he does not quote their language. And how does he represent them ? He says :—

"No bad management of the foundry business is anywhere hinted at. Mr. Boott merely says (App. p. 21), that it was doubtful whether any profit had yet been derived from carrying on those works; and again, that, if a profit could be shown equal to the support of the works, and the gradual liquidation of the debts (of Lyman & Ralston,) it might be a judicious course to go on; and that he will send down his clerk, Mr. Tufts, to examine the books with the view of determining this point. The result of Mr. Tufts's investigation is not given; *but the works were permitted to go on.*" [L. p. 81, 82.]

Of course, Mr. Lowell's reader, if he was not pains-taking enough to turn to my appendix and examine the whole letter for himself, was, by this, given to understand, and Mr. Lowell meant he should understand, that the whole question under consideration was, whether the *works* should be "permitted to *go on*;" that Mr. Kirk Boott's opinion was, that it might be judicious, if a certain amount of past profit could be shown; that the solution of this question was to depend on the result of Mr. Tufts's investigation; and that, since "*the works were permitted to go on,*" the result of that examination must have been satisfactory to Mr. Kirk Boott, and must have established the profitable character of this business, at least in his opinion.

I will now present the *residue* of that letter, coming in between the two paragraphs already extracted, that the reader may see for himself, whether he had been given to understand rightly, by Mr. Lowell, concerning its contents, and concerning the evidence of Mr. Kirk Boott's favourable opinion.

"He [Mr. Robert Ralston, Jr.] was evidently seriously alarmed. In the evening, Ash. [Mr. A. Ralston.] and he took me into the library. Ash. remarked that all the debts coming due were to his family, and that they might be postponed; and that, if it were possible to divide the stock there into shares, he thought it would be possible to induce some of his creditors to take shares for their debts; and that he would himself. *That J. W. B. should have his proportion;* and that, if this were accomplished, he might then hypothecate them without stopping the works. This morning he proposed to me the following: *That Lyman should convey to R. R. [Mr. Robert Ralston, Jr.] all his interest in the M. D. F., as well as any claim upon J. W. B. as executor, and his reversionary interest in the estate.* *That the partnership should be dissolved.* *That the stock should be made a joint concern.* *That J. W. B. should take charge of the works,*

and R. R. manage the business in town. That \$10,000 should be withdrawn as soon as practicable, to pay cash advances, made by Matt., [Mr. Matthew C. Ralston.] and that he would undertake that the other debts should lay for years, and be reduced out of the profits of the concern." [B. App. p. 29.]

The matter referred to, then, was not the *general* question whether the works should go on or not; but whether they should go on *upon a particular scheme*, namely, the turning of the concern into a joint stock company,—the shares to be divided between *the Ralstons and J. Wright Boott—Mr. Boott to take his full proportion of the stock*, and to conduct the works under his own charge, for account of *that company*.

Now the works were *not* permitted to go on *according to that scheme*, but according to a modification of it, containing this essential change: The joint stock company was formed; but it consisted of the Ralstons and *Mr. Lyman*, instead of the Ralstons and Mr. Boott. Mr. J. Wright Boott, acting upon his own judgement, with the concurrent advice of Mr. Kirk Boott and myself, and of Mr. Lowell, would have nothing to do with it. The result of Mr. Tufts's investigation, if he made any, was, to satisfy Mr. Kirk Boott,—and if not he was otherwise satisfied,—that there was *not* such profit in the business as would make it a judicious course for the works to go on. Mr. Ralston still thought otherwise; and the consequence was, that Mr. J. Wright Boott, under the advice above mentioned, *sold out* to his partners, at great apparent loss, all his interest in the concern, upon the basis of a settlement, which Mr. Lowell himself effected, and gives some account of. *The works went on*, it is true,—but upon a new and different account, not concerning Mr. J. Wright Boott, nor his father's estate, for whom and which it was preferred to meet the present loss, rather than to take the risk of continuing a business so poorly thought of by Mr. Kirk Boott, and which, as the event proved, turned out most disastrous. Yet, because the works were not physically *stopped*, Mr. Lowell, knowing these facts, suggests to the reader, that the going on, after what Mr. Kirk Boott had said, (as Mr. Lowell represents it,) shows the *favourable* opinion formed by Mr. Kirk Boott of that excellent investment.

This seems hardly so exact, or so ingenuous, as one might expect from a gentleman, who assumes so high a tone, and who sprinkles his pages, so plentifully, with charges upon others of mistake and unfairness.



C H A P T E R XXIII.

MR. BOOTT'S DEBTS. THE BUSINESS OF THE IRON FOUNDRY. MORE OF MR. LOWELL'S MISTAKES.

For the main fact stated in the preceding chapter, *the sale* of the concern to a joint stock company, *Mr. Boott retiring*, I need only refer to Mr. Lowell himself. [L. p. 79.] Indeed, he says, in reference to my former pamphlet, "but he [Brooks] is evidently ignorant that, by the settlement of 1831, *Mr. Boott parted with his whole right, title and interest in the Mill Dam Foundery, and had no more to do with its winding up, or the subsequent gain or loss, than Mr. Brooks or I had.*" [L. p. 109.] So that, whether I were ignorant of this fact, *then*, or not, we do not, *now*, disagree about it.

I beg to say, however, in passing, that Mr. Lowell's inference of my ignorance of a fact, very well known to me at the time, is founded only on the errors, which I have already admitted, in my recollections, without sufficient papers to guide me, of some of the details of those old and complicated affairs, and more particularly, it would seem, on this single sentence of mine:—"I *presume*, before the business was wound up, his loss there, including interest, was not much short of \$100,000;"—on which Mr. Lowell modestly remarks, "I do not doubt such is Mr. Brooks's judgement; and his *presumption* is undeniable." [L. p. 109.] But, in this, he seems, himself, to have forgotten, that Mr. Boott's memoran-

dum, showing an investment in the foundry, at that date, to the amount of \$70,000, was made in the summer of 1830; that a large amount of interest had already accrued upon it, (for the business was begun in 1826;) that the business went on for the joint partnership account, and badly enough, till September or October, 1831, [L. p. 108.] with much probable further loss, besides accruing interest; that about two years more elapsed, before the engagements, made to Mr. Boott, by his partners, in their settlement, were fully performed, as appears by the date of the surrender by Mr. Lowell of the last of the collateral securities, which he held for those engagements; and that my opinion, whether right or wrong, of the extent of Mr. Boott's loss, including interest, was founded, expressly, upon the winding up of the business, "so far as Mr. Boott's concern in it extended," [B. p. 46.] and not upon its final abandonment by Lyman & Ralston, as he would have the reader suppose. I had forgotten only, or rather did not turn my attention to, the immaterial fact of the *particular manner*, in which Mr. Boott's concern in the foundry terminated.

The truth is, I was well acquainted with the whole course of the transactions at the time. The deeds and legal papers, connected with it, were, generally, drawn by me. Among other gratuitous services, I was instrumental in obtaining for Messrs. Lyman & Ralston, in June, 1831, the act incorporating "The proprietors of the Mill Dam Foundry," under which the joint stock company was formed. I even allowed myself to be named in the act as an associate, to facilitate them in obtaining it. I was much urged to take an interest under it, and even to consent to stand as a *nominal* stockholder, if I would not be a real one; and, in that form, to lend, further, my name and countenance to the scheme. But all this I steadily declined,—though much disposed to oblige them,—because I never felt the least confidence in the concern, nor, particularly, in their valuation of the property; which, after they had bought out Mr. Boott, was turned in to the corporation at the nominal price of \$120,000, paid, of course, with stock issued to the associates, who were no other than Messrs.

Lyman and Ralston themselves, and other members of the Ralston family, creditors of the old concern, who took stock in the new, either for payment or security. One other gentleman, only, of this city, then a clerk of Lyman & Ralston, was, in the outset, the nominal holder of a single share, lent to him, as I understood, or taken upon a guarantee against loss, to induce him to act as clerk of the corporation, and to aid in keeping up its organization. Even the mortgage, to one of the Ralston family, which I thought had been foreclosed, I have since found, by the Registry of Deeds in Norfolk, I myself discharged as his attorney ; though the papers having passed out of my hands, that fact, being one of no great interest in itself, and wholly immaterial to the present controversy, did not occur to me. I now find, that, of the one hundred and twenty shares originally created in this joint stock company, one hundred and two were issued to Messrs. Lyman & Ralston, and the rest were distributed between Mr. Robert Ralston the father, and Messrs. A. & G. Ralston, with one to the clerk. Thirty-four of Lyman & Ralston's were immediately transferred to Mr. Lowell, "for J. W. Boott," as collateral security for their engagements to him in the settlement ; and Mr. Lowell held a portion of them, on that account, till about two years after. Fifty more were transferred to Matthew C. Ralston, the holder of the mortgage, which was thereupon discharged. From him they soon passed to Robert Ralston, the father, who thus became, virtually, assignee of the mortgage debt, and of its new security ; and by other transfers, stock, to the amount of one hundred and fourteen shares, became, ere long, collected in his hands, and were held by his executors until the final sale of the property, in 1847,—the other shares (including a new issue of twenty,) being then held by other members of the Ralston family ; and by the officers of the corporation here, who, it seems from Mr. Nicolson's letter, [Ante. p. 49.] were official holders, and not parties in interest. Such are the facts, as they now appear, (except the last,) by the records of the corporation,—leading to the substantial result, which I formerly stated, namely, that the whole property became vested in

the Ralstons, (though not by foreclosure of the mortgage,) and that it eventually produced to them \$30,000 only, which was the principal of the mortgage debt.

Upon all the facts now known, my belief is, still, that the whole concern, taken from beginning to end, with a mercantile interest account, was greatly more than a total loss; and that Mr. Boott's share of that loss, up to the time when he became fully extricated, by the complete fulfilment, in 1833, of the terms of the settlement, made in 1831, was, with an interest account, *not at all short* of \$100,000, excepting so far as a part of it may have been got back by his settlement with Lyman & Ralston, in 1831, partly in the shape of *reversionary* property, and partly in the shape of a discharge for the debt he owed them as executor. The extent of this I shall consider hereafter.

For what I say, above, respecting my own distrust of the property at the time, and respecting my unwillingness to be connected with it, I am able to refer to another letter of Mr. Kirk Boott, not before printed; and this is the more valuable, because it serves to confirm, if confirmation were needful, what I have said of *his* opinion; for it seems he advised Mr. Ralston, instead of going on with his joint stock company, to make an absolute sale and quit the business. It would have been fortunate, as Mr. Ralston would now admit, if that advice had been taken. The only further explanation, needful to the understanding of the letter, is, that, being desirous to turn off, gently and without offence, the solicitations of my friends, I requested Mr. Kirk Boott to soften the matter for me, and to put my refusal on the ground that the business was out of my line, and that I was no fit judge of that kind of property, with such other suggestions as he might think proper. Of course, I did not wish to tell Mr. Ralston, in direct terms, that I thought his foundry of little or no value, and his business not worth pursuing, though it would seem, that Mr. Kirk Boott did not stop much short of that, in expressing *his own* opinion, which he had, no doubt, a right to express with great frankness, from the course of the conversation, as well as because he was a very competent judge of such property and business. This is the letter:—

LETTER FROM MR. KIRK BOOTT.

“LOWELL, Sunday Morning.

DEAR SIR,

According to my promise, I delivered to Ralston the papers you gave me, and explained very frankly to him the reasons why you could not, and ought not, to become interested with him in the Mill Dam property in the way he suggested. I explained to him your desire to serve him, but at the same time remarked, that your taking the lead would not produce the effect he seemed to expect, owing to the connexion subsisting between you; but that if it should, it was placing you in an awkward position, as sanctioning a valuation of the property, of which you have formed no judgement, but which, it would be inferred, you had carefully examined, and approved. He took it in good part, but seemed unwilling to listen to any disparaging views of the value of this property.

I advised him to endeavour to make an absolute sale, as I supposed he could make an advantageous removal to Philadelphia. I am interrupted—but will explain more fully when I see you. I had no opportunity to write, but sent a message, by Mr. Wells, which I suppose you would understand. My wife intends going with Dr. Bigelow, and will take Sarah. Love to Eliza.

Yours, in haste,

KIRK BOOTT.”

EDWARD BROOKS, ESQ., BOSTON.

To return, then, to Mr. Lowell. He undertakes to say, that the foundry, for which alone, he says, Mr. J. Wright Boott was liable, stood quite free from debt, except a small sum of \$2500 due to Col. Thorndike! Now, in addition to the evidence of great indebtedness in the letters of Mr. Kirk Boott, I may remark, that it would be a novelty under the sun, in this country at least, if extensive iron works were conducted, for a series of years, by persons of moderate capital, (two, at least, of the three partners having, at that time, I may safely say, *no* capital, unless borrowed, and I believe this will appear to have been equally true of the third,) and yet *owe* nothing, except a mortgage debt of \$2500 for the land, on which they stood—for such was the character of the debt to Col. Thorndike. Mr. Lowell may be right; but the proceedings of the joint stock company seem to speak a different language. For, it appears by the records of the corporation, that their first act, after fixing their capital at \$120,000, the (nominal price, at which Messrs. Lyman & Ralston, after settling with Mr. Boott, sold the property to the corporation,) was to ex-

press the understood condition of that sale, and of the settlement with Mr. Boott, by the following votes:—

EXTRACT FROM THE RECORDS.

“Voted, that this corporation take the whole property, real and personal, which has hitherto belonged to John W. Boott, William Lyman, and Robert Ralston, jun., as conveyed by deed subscribed by them, dated September, 1831, at a valuation of \$120,000—it being understood, that *said corporation shall pay ALL BILLS, DEBTS, OR NOTES, contracted, or given, BY SAID COPARTNERSHIP of said Boott, Lyman, and Ralston, and shall fulfil ALL THEIR CONTRACTS for work or otherwise*; it being also understood, that the corporation is to have the advantage of all bills, or debts, due to the said parties, and contracts on hand.”

“Voted, that this corporation will *guarantee and save harmless* John W. Boott, William Lyman, and Robert Ralston, jun., and their executors and administrators, from all actions, suits, costs, and damages, on account of a note given by the said Boott & Lyman to Israel Thorndike, for \$2500, dated the 16th day of March, A.D. 1826, and payable in seven years, with interest, and *on account of ANY AND ALL OTHER DEBTS contracted by said Boott, Lyman, and Ralston, ANY, OR EITHER OF THEM, FOR THE USE OF THE COPARTNERSHIP HITHERTO EXISTING BETWEEN THEM, all which debts shall be paid by this corporation at maturity.*”

This it may be remarked, is, substantially, the declaration of Mr. Lyman and Mr. Ralston themselves; for they were the only stockholders present at the meeting, besides the clerk. They passed the votes. The debt to Mr. Thorndike was particularized, because it was a *mortgage* debt, binding the *real estate* specifically. But an indefinite quantity of “bills,” “debts,” “notes,” and “other contracts,” are recognized as binding, *personally*, the late “copartnership of said Boott, Lyman, & Ralston,” and requiring a guarantee from the corporation, *to Mr. Boott*, no less than to Messrs. Lyman and Ralston, notwithstanding the special security he had from them, as Mr. Lowell informs us, against the *endorsed* paper. [L. p. 79.]

This seems to be what Mr. Lowell calls “another contemporaneous exposition, to be offset against his *reminiscences*,” [L. p. 104.] or rather against his present statements, founded, as he leaves the reader to infer, on the reminiscences of Mr. Ralston.

But, there is one other authority upon this subject, which

Mr. Lowell will hardly dispute,—that is, himself. For he does not seem to have been *always* of opinion, that “this concern *owed no debts*, except *one* of \$2500 to Col. Thorndike;” or that Mr. Boott was not, in fact and in law, liable for them. Mr. Lowell takes no notice whatever of a letter of his own, of a date so recent as Jan. 31, 1845, which I printed in my former pamphlet. [B. p. 130.] The question then under discussion was, whether Mr. Boott was justified, in using the property of his father’s estate in the business of this foundry. Mr. Lowell undertook to say, that a letter of Mr. Kirk Boott authorized the assertion, that I had, myself, formerly, considered him justified in doing so. I asked to see the letter, and Mr. Lowell transmitted me a copy of that part of it, on which he relied. It showed nothing like what he had pretended. This the reader will see by looking at it, with my former remarks in that connexion. [B. p. 129, &c.] But what I now call attention to is a single sentence from Mr. Lowell’s own letter to me, transmitting the extract from that of Mr. Kirk Boott. It is this:—

EXTRACT FROM MR. LOWELL’S LETTER.

“ You will remember, that, by a settlement afterwards made with Lyman & Ralston, *Mr. Boott was EXONERATED from ALL the debts of THE MILL DAM FOUNDRY*; and of course, the fund was not diminished, as Mr. K. Boott feared it might be.” [B. p. 130.]

That is to say, according to Mr. Lowell’s past and present assertions, taken together, Mr. Boott was *exonerated* from debts he was *never bound for*, and exonerated from *all* the debts of a concern, which owed *no debts!*—unless, indeed, we except *one* of only \$2500 to Col. Thorndike, and that secured by a mortgage of property, which cost \$114,000! [L. p. 90.]

These corporate records, and the deeds and letters I refer to, are the only documents open to me bearing on this question. If Mr. Lowell would have the kindness to exhibit those papers, which he says he has, relating to the final settlement between Mr. Boott and his copartners, they would, undoubtedly, throw further light upon it. That he has been careful not to do. But until he does, or until something more than

his own inferences, without the documentary proof, shall be produced, he must excuse me for not readily abandoning, at his suggestion, my impressions, formed from facts known to me at the time, that the copartnership of Boott, Lyman, and Ralston, under whatever name its business had been transacted, was in a state of very heavy indebtedness; that its debts constituted a part of Mr. Boott's personal liabilities; and that great apprehensions were entertained, lest not only the property of the foundry, but other property in his hands, standing as his own, and unprotected by the name of executor, or trustee, for the trusts, to which it justly belonged, might be attached, and taken to satisfy those debts. The amount of them, for which he was so liable, I believe to have been about \$50,000, besides the \$30,000 of paper specially endorsed.

While on this subject of the Mill Dam Foundry, let me dispose of one or two other remarks of Mr. Lowell above cited. He says there was no bad management of its business—or rather, he says in terms, that Mr. Kirk Boott's letters contain no hint of it, and he would have it thence understood, that there was none. One would think there was hint enough of bad management, by somebody, in the disastrous state of affairs, which Mr. Kirk Boott's letters so plainly indicate. One species of it, however, is particularly apparent,—the same, which runs through every thing, with which Mr. J. Wright Boott was connected,—want of regular systematic accounts, and of strict attention to the condition of financial affairs.

The disclosure, made in 1830, was as great a surprise to Mr. Kirk Boott, (his letters show that,) as to me. The suddenness of it would seem to show, that the embarrassment, which led to the disclosure, must have been as surprising to Mr. J. Wright Boott as to either of us. The first advice, thereupon given to him by his brother, was, "to bend all his attention to *making up an accurate account* of the works on the Mill Dam." This Mr. Kirk Boott mentions in his letter to me, of Sept. 26, 1830. [B. App. p. 16.] My answer, it seems, suggested the preparation of some more comprehensive statement,—probably of all his accounts with the foundry, with his wards, and with his father's estate. But Mr. Kirk Boott,

aware, to some extent at least, of his brother's failings as an accountant, replies, on the 29th of September, "if such a statement as you have recommended can be made up, *which I fear J. W. will find almost impossible*, it certainly would greatly facilitate the settlement. The truth *may be approximated*, if not correctly ascertained." But, no statement of any kind could ever be got from Mr. J. Wright Boott, and no fitting one, even of the affairs of the foundry, from either of the partners. A month later it is still wanting; for Mr. Kirk Boott then asks, can not an assignment be made and kept secret, that would bar attachment, at all events, *till we see the results of the accounts of the M. D. F.?*" [B. App. p. 19.] It is not till months after that, that certain calculations on paper appear to have been shown by Mr. Ralston. But they were not accurate accounts, nor such calculations as Mr. Kirk Boott was able to place confidence in;—for his observation was, "that however well his statements looked on paper, it did appear to me, that there must be some fallacy in them; and that, as far as I could see, it was doubtful, whether any profit had yet been derived from carrying on the works." [B. App. p. 21.]

This was at a time, when, as the letter shows, the scheme of a joint stock company was talked of; which must have been shortly before, or shortly after, the obtaining of the act of incorporation with that view. The act was passed June 22, 1831. This fixes, with sufficient nearness, the date of Mr. Kirk Boott's letter. He had been waiting, then, some eight or nine months, at least, for that "accurate account of the works on the Mill Dam," to the making of which he recommended his brother, at the outset, "to bend all his attention." He had got nothing, but the imperfect and superficial figures of Mr. Ralston. What is the consequence? In answer to the suggestion of a joint stock company, in which his brother is to be concerned, he says, "in the mean time *some competent person should make out a statement of the affairs of the M. D. F.*" "*To accomplish this I am to send down Tufts, my clerk,* and upon the result, we could determine, whether this course might be adopted." And what was the conse-

quence of that? Since Mr. Kirk Boott usually did what he undertook, it may be fairly presumed, in the absence of any evidence to the contrary, that he did send down his clerk. The consequence was, that Mr. J. Wright Boott *sold clear out of the concern*, upon the best terms he could, and as soon as terms could be agreed on.

So much for the evidence of good management in Mr. Kirk Boott's letters!

Mr. Lowell, after thus repudiating the idea of any mismanagement of the foundry, is obliged, in another part of his argument, to state a case, which looks very like it, viz. the final winding up, by his late copartners, after Mr. Boott had quitted the concern, "with outstanding debts of the firm, amounting, *after deducting all assets*, to \$111,188 22." [L. p. 202.] But, perceiving how that might bear, his zeal to carry Mr. J. Wright Boott through every thing, leads him to throw the whole blame of this on Messrs. Lyman & Ralston, by a note in this form :—

"It is also notorious, that it was from his connexion with this firm, in the business of the Mill Dam Foundery, and *not from any mismanagement of his own*, that Mr. Boott suffered the loss of a large part of his private fortune." [L. p. 202.]

Indeed, by implication, he seems to exonerate Mr. Ralston, also, from any share of the mismanagement, and to throw the whole blame on Mr. Lyman, "after that gentleman's lips are sealed by death." [L. p. 89.] For he not only shows, in stating the results of the partnership accounts, "a total of \$66,000 that Mr. Ralston had lost by Mr. Lyman," [L. p. 202.] but he, elsewhere, is careful to inform us, that "Mr. Ralston was a thorough man of business; but Mr. Lyman, on whom devolved the management in Boston, though an amiable and gentlemanly man, was without mercantile experience, and inadequate to so heavy a responsibility." [L. p. 76.]

Now, I am no representative of Mr. Lyman, and Mr. Ralston is not only a friend, and a brother-in-law, but a gentleman, for whom, on many accounts, I feel the highest esteem. So I did for Mr. Lyman, in his life-time, who stood to me in

the same relations. I have no desire, therefore, to institute, unnecessarily, a comparison between them in their business capacities, nor am I under any necessity to join such an issue in this case, though Mr. Lowell offers it. My relation to Mr. Boott would have enjoined equal caution in respect to him, were it not that I am, unfortunately, compelled to speak of *his* conduct and habits, as a man of business, by the questions, which are forced upon me by Mr. Lowell. Mr. Lowell thinks this unjustifiable in the extreme, and emphatically declares, "that few things are more odious, in the view of mankind in general, or more repugnant to their instinctive sense of propriety, than an attack on the memory of the dead." [L. p. 1.] So he begins his book. Yet, we see, so "signally treacherous" is his memory, that before he gets to the end of it, he does not hesitate, himself, when his line of argument requires it, to commit the same sort of outrage, as he affects to consider it, upon Mr. Lyman. I charge Mr. Boott, who is dead, with incompetency and mismanagement. According to Mr. Lowell, "Few things are more odious in the view of mankind." Mr. Lowell charges Mr. Lyman, who is dead, with incompetency and mismanagement. But who, of mankind, will suspect, that there is any thing odious in that?

Now it is but just, as Mr. Lowell must admit, that Mr. Lyman should be heard on this point; and if I am called upon to state, I must say, that *both* of Mr. Boott's partners, but more particularly Mr. Lyman, complained to me grievously, at the time, of *his* management at the works, which, during the co-partnership, were under his particular charge and direction. Mr. Ralston, being in Philadelphia, could not personally oversee them. Mr. Lyman's principal charge was at the counting room of Lyman & Ralston, in Milk-street, Boston. Mr. Boott's place was at the Mill Dam. He oversaw and directed the building of the works, and all the operations, processes, and expenditures of the mill. His course of proceeding passed under the constant observation of Mr. Lyman, who resided in Boston. The complaint of this gentleman used to be, that Mr. Boott insisted on a much larger and more costly

and more hazardous scale of operation, than he (Mr. Lyman) had any idea of, when he embarked in the business. He wished and expected to have it confined, mainly, to a small manufacture of grates, for the burning of anthracite coal, which he desired to introduce into this market from Philadelphia. But he was constantly overruled by Mr. Boott, who, according to his habit, entertained more expansive views; and, since he furnished the capital, Mr. Lyman felt obliged to submit.

Mr. Boott was not even content to confine himself to the business of casting iron on a large scale, but projected and chose to attempt, in combination with it, against Mr. Lyman's judgement and remonstrances, and I believe against Mr. Ralston's also, quite a distinct branch of iron working, which proved unsuccessful. If I may be allowed to indulge in a further "reminiscence," I may add, that, upon one occasion, when I visited the foundry in company with Mr. Lyman, he pointed, in illustration of his remarks, to a certain part of the works, and said, "there lies \$30,000!" I saw nothing but a quantity of bricks and mortar, forming, to all appearance, an ordinary furnace, of moderate dimensions. The explanation was, that it was built, by Mr. Boott, for the purpose of testing some fancied improvement in the making of *steel*;—that \$30,000 (a sum which seems almost incredible, but which I am confident was the sum named by Mr. Lyman,) had been spent in a system of experiments for that end, which entirely failed;—and that *this furnace was all there was to show for the money!*

These are facts, which, though Mr. Lyman be dead, and though Mr. Ralston may prefer not to be a witness on the subject, are, no doubt, capable of proof by other persons, if it were worth while to hunt up evidence on so collateral a matter. I know nothing of the facts myself. I know only what Mr. Lyman told me. I have letters, however, of Mr. Ralston, not on that particular subject, but indicating his dissatisfaction with Mr. Boott in several respects. Without undertaking, therefore, to settle the question, to which of the three the ruin was *most* attributable, I think I may safely say, that it

is very unjust to throw the whole blame on Mr. Lyman, even if it were not that Mr. Lowell thinks nothing can justify such aspersions on the dead. My belief is, that the "load of debt" crept up, mainly, from injudicious management and unprofitable expenditure, *at the works*, and by the particular orders of Mr. Boott.

Let me now point out one more error, as I take it to be, of Mr. Lowell. He says Mr. Boott was the *owner* of *one half* of the foundry; [L. p. 90.] and I have admitted that the *legal title* of the real estate so stood. Lyman & Ralston, jointly, he says, owned the other half, or, in his own language, "were to be interested to the extent of one half in the new enterprise." [L. p. 76.] Now so far as the legal title was concerned, the other half stood in the name of Mr. Lyman alone; and Mr. Ralston complained of Mr. Boott, who directed the conveyance, for having left him out. But the mere question of legal title to the land, settles nothing as to the relative extent of the partnership interest by private agreement; and that I take to have been one third each. I state this on the authority of Mr. Ralston, not as a "reminiscence," but as he stated it at the time. It appears by the following letter, which bears also somewhat on other points above alluded to, viz. his dissatisfaction with Mr. Boott, after the difficulties began, and the disagreement of the partners as to the amount, which Mr. Boott ought, equitably, to contribute to the liquidation of the debts. That is, it will be seen, that Mr. Ralston claims, in this letter, that Mr. Boott was mistaken in supposing, that he had furnished so great a proportion of the funds, compared with Mr. Ralston, as he had insisted that he had; and, if so, he had of course the more to furnish to his partners towards payment of the debts. Mr. Ralston, also, claims to have been interested *one third* in the joint establishment, and on that ground insists on being admitted, equally with Mr. Boott and Mr. Lyman, into the legal title. It also seems, that Mr. Boott had, at one time, refused to admit that claim, on the ground of his greater advances; that he had afterwards intimated, "though indistinctly," a disposition to yield it; and that the claim is urged by Mr. Ralston as an act of "simple justice,"

with no doubt, on his part, that it will be agreed to by Mr. Lyman, but with some diffidence of Mr. Boott's final assent.

I print the letter entire, since I see nothing in it improper to be published, or which Mr. Ralston can reasonably object to my using, for the correction of misstatements, which might, otherwise, seem, after Mr. Lowell's reference to him, to rest on his authority. It is simply "a contemporaneous exposition" of certain facts in the case. The *Italics* correspond with the underscoring of the original.

LETTER FROM MR. RALSTON.

"PHILADELPHIA, Nov. 12, 1830.

MY DEAR SIR,

I arrived here yesterday, after having had rather an agreeable journey, although it rained nearly all the way. Colonel Baldwin was my companion as far as New York, and from his friendly conduct, I flatter myself that he may become a very good customer.

As I anticipated, before sending on the mortgage, I found my friends here exceedingly astonished that my name does not appear in the title papers of the M. D. F.; and as they think so much of it, it occurred to me, that, perhaps, from what J. W. B. said to you, and from what I gathered from him, *though indistinctly*, that he may be of different mind from what he was before he became convinced, as I think he now must be, that he has not furnished so great a proportion of the funds, and that he will now consent to do me the *simple justice* of placing me where I should have been from the beginning. Will you, therefore, if you approve of it, call upon him, and see if he will now sign the deed, which you had the kindness to make out? If he does, to get L.'s signature, also, to it. As we are all liable to accidents, and as any thing which might happen to either J. W. B. or W. L. would place me in an exceedingly awkward predicament, my friends have thought that I ought not even to delay the thing until my return. My father thought that I ought to consult Mr. Chauncey on the subject. But, upon informing him of the exceedingly respectable opinions had from counsel in Boston, he waives his opinion. It has been suggested, that if any thing should occur, which could prevent J. W. B. and W. L. from placing my name in the papers, as interested one third, it would leave a stigma upon their names, that they should have made so important an omission, whilst I was absent, and of course unable to attend to my own interests, and those who have placed confidence in me. I do not think, however, that many arguments, if any, will be necessary to bring the thing about, as I am satisfied, and so are my friends, that the omission was accidental, and that J. W. B., upon further reflection, must be convinced of the propriety of doing what I have asked.

The paper, which was to have been signed, is in the portfolio, which I used at Boston, together with the Thorndike deed. By describing

them to Anne, she will be able to give them to you. I hope that you will excuse this additional trouble, which nothing but the importance of the case could induce me to ask of you. W. L. will sign the paper without a moment's hesitation, and I flatter myself that J. W. B. will also.

With love to Eliza, I am, in much haste,

Yours very truly,

ROBT. RALSTON, JR."

EDWARD BROOKS, Esq., BOSTON.

And now, having pointed out several apparent mistakes of Mr. Lowell, in this part of the case, I should only adopt his pretensionary style, if I were to say, "By this time I think it must be pretty evident, that" Mr. Lowell "has undertaken to enlighten the public about transactions of which he never knew any thing, or which he has completely forgotten," [L. p. 109.] unless he prefers to claim the alternative of perfect knowledge, accurate recollection, and wilful misrepresentation. Instead of this, I yield to the *possibility*, that he may have better evidence, among the papers in his possession, to bear out his statements, than I have yet seen. But if so, *let him produce it*, and we shall soon see where the truth lies. Otherwise, I must be permitted to adhere to my former and present opinions.

CHAPTER XXIV.

MR. BOOTT'S DEBTS. HIS GUARDIANSHIP ACCOUNTS.

I trust I have now shown, that Mr. Lowell has not succeeded in maintaining his assertion, that there were no debts, contracted in the name of Lyman & Ralston, for which Mr. Boott was responsible, except such as he had specially endorsed; and that I am not chargeable with mistake in the amount, for which he was, at the time, supposed to be respon-

sible ; nor, so far as appears by any evidence yet produced, in the amount, for which he actually was responsible.

There is one other item, however, in my foregoing statement of liabilities, concerning the extent of which I admit a mistake, since discovered, though Mr. Lowell does not correct it. Can it be that he was mistaken too ? Or does he, after correcting so many of my supposed mis-reminiscences, omit to point out this, only because it happens to make *against* his side of the argument ?

Mr. Boott, at the time of handing me the memorandum of 1830, loosely estimated his debt, to his wards of the F. Boott family, at about the round sum of \$20,000. I, accordingly, took it to be so, in my former pamphlet, without further examination ; and Mr. Lowell is careful to confirm my statement. [L. p. 77.] But his unlucky attack upon me, for a supposed mis-recollection, to the extent of \$7500, in the difference between simple and compound interest, as ascertained, some years after, in the settlement of those accounts, led me to examine one of them critically ; and I was then surprised to find, that the amount of uninvested cash, in Mr. Boott's hands, on that single account, without interest, was, at the date of his memorandum, about \$9000 ; and that simple interest would add about \$6000 ; and that compound interest, which was, afterwards, Mr. Boott's idea of the principle to settle upon, would, in 1830, have brought the whole debt, on that single account, up to about \$17,000. This led me to look at the three other accounts, two of which, I found, did not differ, materially, in this respect, from that, which I had examined. On the fourth, there had been a partial settlement, on occasion of the ward's marriage in 1826. Being clear in my recollection of Mr. Boott's representation, yet wondering at the strangeness of the fact, that he should have made so great an under-estimate of his indebtedness to his wards, I placed the four accounts in the hands of an experienced accountant, for examination, with instructions to ascertain, from their statements, the actual condition of the guardian's cash balance, with and without simple interest, from year to year. The result, at the period now spoken of, appears by the following letter :—

LETTER FROM MR. JOHN S. TYLER.

“ BOSTON, January 18, 1849.

EDWARD BROOKS, Esq.

SIR,

It is some months since I ascertained, at your request, the difference between simple and compound interest, on the probate account of ‘John W. Boott, surviving guardian of Frances Boott.’ You afterwards requested me to take the same account, and three other probate accounts, by the same party, as surviving guardian of ‘Mary Boott, now Mary Goodrich,’ of ‘Harriet Boott, now Harriet Loring,’ and of ‘Francis Boott,’ all running from Sept. 1816, to Jan. 1835, and to state from them the position of the guardian’s cash account, with each of his wards, from year to year, and the amount due *to* or *from* him, in each year, for the cash balance, with the simple interest.

Having done this, as soon as my other engagements would permit, I now transmit the several cash accounts, showing the balances from year to year, both with and without interest. I send also a condensed abstract, which shows, in a tabular form, the results of all the four accounts. That is, it shews the amount due, in each year, to or from the guardian, on each account, for principal, for interest, for principal and interest, added, and also the aggregate result of the four accounts for each year.

Thus, for the years 1830 and 1831, which you called my attention to more particularly, the statement of the table is as follows :

Dates.	Names of Wards.	Cash advanced.	Cash in hand.	Interest at 6 per cent.	Debt.	Total.
<i>1830.</i>						
Sept. 30, Frances,			\$9,492 83	5,614 00	15,106 13	
“ Mary,		598 78		2,907 05	2,308 27	
“ Francis,			9,429 53	5,763 54	15,193 07	
“ Harriet,			8,968 28	5,402 94	14,371 22	
			27,890 64	19,687 53	46,979 39	
			598 78			
			27,291 86			
			19,687 53			
			46,979 39			
				Actual Debt,		46,979 39
<i>1831.</i>						
Sept. 30, Frances,			\$9,048 67	6,156 91	15,205 58	
“ Mary,		598 78		2,871 13	2,272 35	
“ Francis,			8,706 94	6,285 96	14,992 90	
“ Harriet,			8,185 60	5,894 08	14,079 68	
			25,941 21	21,208 08	46,550 51	
			598 78			
			25,342 43			
			21,208 08			
			46,550 51			
				Actual Debt,		46,550 51

. The column headed '*Cash in hand*,' is intended to represent the principal sum due, after it has begun to draw interest. Thus, for the year 1830, against the name of 'Frances,' the sum of \$9,492 83 is the uninvested balance of all the guardian's actual cash receipts and payments, in previous years, for the account of that ward, down to the end of the last preceding year, i. e. Sept. 30, 1829, without interest. The balance is carried forward to 1830, as a debt drawing interest.

The column headed '*Interest*,' is the aggregate of the *simple* interest on that balance for one year ending Sept. 30, 1830, added to the simple interest of like balances in the preceding years, less simple interest on the advances of former years, where they occur. If, for instance, the day selected for stating the account of the year, i. e. Sept. 30, happens to show a larger sum paid out, at that moment, than the aggregate receipts of the year, added to the sum on hand at its commencement, this is treated as a debt due to the guardian, on which interest is to run. This balance, in his favour, is carried forward to the next year, and one year's interest is then allowed him upon it;—so that the column of interest shows the result, in any particular year, of the interest on the cash balances of all preceding years, added, or subtracted, as the case may require. This is as favourable a mode to the guardian, of computing an interest account against him, as could be adopted.

The column headed '*Debt*,' shows the state of the guardian's account with each ward, from year to year, for principal and interest combined.

One other point in the table requires explanation. What I set down, in 1830, under the head '*Cash advanced*,' on the account of the ward 'Mary,' might well be regarded, since the principal of the debt to her has disappeared, as so much *paid*, in partial extinguishment of the larger balance of *interest*, than really due to her, though not ascertained to be so until the final adjustment of the interest account in 1835. But, by treating it as an *advance* of principal, instead of part payment in reduction of interest, I adopt the most favourable method for the guardian, of computing interest against him down to the end of the account, because the advance *carries interest*, while, to avoid compounding, *no* interest is permitted to run on the balance of interest already accrued, and which, at this time, constitutes the whole debt. Thus, by comparing her account in 1830 and 1831, it will be seen, that, without any new payment by the guardian, the debt of 1830 is reduced in 1831 by the sum of \$35 92, that being one year's interest on \$598 78, the nominal advance of 1830. I adopt this principle, highly favourable to the guardian, under your general instructions to err, if at all, on the side most favourable to him. And I find, besides, that the result of the computations, on this method, corresponds, more nearly than the result by any other method I have tried, with the sum actually charged in the probate account, for the balance of interest as ascertained and settled in 1835.

The means, by which I get the data to compute interest upon, were explained in my former letter. The same data, of course, enabled me to ascertain the balance of principal on hand and uninvested, in each particular year.

[Here follow details of explanation, at some length, which are omitted, as not important to the reader without the accounts.]

The four accounts, as now stated, present the following general view of the course of the business:—

At the end of the year 1817, the guardian had received, on the four accounts, about \$1850 more than he had paid. That balance is carried forward, and makes a debt in 1818, for principal and one year's interest, of near \$2000. The next year he slightly over-invested, and thereby became in advance \$66 76. That balance is carried forward in the same manner, and interest upon it is credited to him. In 1819, he received enough to pay off that balance, and leave him in debt about \$1600. In 1820, he again over-invested, and with the interest upon his advances, the aggregate of the four accounts, in 1821, stood in his favour about \$4600. But in that year, besides other receipts, he sold between 11,000 and 12,000 dollars worth of U. S. 6 per cent. stocks on each account, and consequently, in 1822, had a balance of cash in hand, after paying off his advances, amounting in the four accounts to over \$45,000, and with one year's interest to near \$48,000. The account, both of principal and interest, was increased in the following year, and the aggregate amounted to nearly \$52,000. It had risen in 1826, to near \$58,000. The partial settlement then made, with the ward, who was married in that year, paid off about one fourth of the principal, and something towards interest, so that the aggregate of debt in 1827, stood reduced to about \$46,000. It remained about the same, with small intermediate fluctuations, until the marriage of the second ward, in 1831. The payment then made, reduced it, in 1832, below \$39,000, and, after that, it continued to be gradually reduced, from year to year, until its final extinction, in Jan. 1835, at the settlement of the probate accounts.

In addition to the fact that the interest is, throughout, mere simple interest, computed on the principle most favourable to the guardian, and very much more favourable than the usual mode of computing simple interest on a merchant's account, I may state, that, if the interest were compounded from year to year, on mercantile principles, the result, upon the four accounts, would be an increase of indebtedness, in 1835, by more than \$12,000.

I am, Sir, your obt. servt.,

JOHN S. TYLER."

It thus appears, upon evidence, which cannot be disputed, namely, the formal accounts made up by Mr. Boott in 1834-5, Mr. Lowell assisting, and I also being consulted respecting interest,—presented and sworn to by the guardian,—settled with the parties adversely interested,—allowed and recorded in the probate court, where any reader may see them who pleases,—that, in 1830, when Mr. Boott supposed himself indebted on those accounts only about \$20,000, (as I state

from my recollection, and Mr. Lowell confirms from his,) [L. p. 77.] he was, in fact, indebted, for moneys in his hands, and simple interest upon them, upwards of \$46,000.

Here, it may be noted, by the way, is another fact, serving to prove, how loose and inaccurate Mr. Boott was, in his accounts and habits of business. For I have no belief that he had any intention to under-state, to Mr. Kirk Boott and myself, his actual liabilities, so far as he was willing to overcome his habitual reserve by stating them at all. Interest, not then calculated, he, probably, did not take into consideration. But even upon the principal of the debt, he was out of his reckoning by about \$7000; which could hardly have happened, if he had been in the habit of keeping accurate accounts, with regular entries well posted up.

We are told, indeed, that while Mr. Lowell was a clerk in the house of Kirk Boott & Sons, Mr. J. Wright Boott's accounts, with these wards, were annually computed and settled; and that Mr. Lowell still possesses copies of them, in Mr. Boott's hand-writing. [L. p. 98.] None are produced, so that we may see what sort of accounts they were; and what is meant, by saying they were *settled*, I do not understand. They certainly were not settled in the probate court; its records show that; and since Mr. Boott, after his father's death, was the *sole guardian* of these minors, who was there, out of court, but himself, with whom they could have been settled?

Besides, the account in question began September 30, 1816; and Mr. Lowell left the house of Kirk Boott & Sons, in March, 1819; [L. p. 23.] so that he cannot have known the fact, of which he speaks, to have happened more than twice, at most, during his clerkship. And yet, from the manner, in which he speaks of it, one would naturally suppose, that he was speaking of some settled habit and course of proceeding, which, to his knowledge, ran through a series of years.

But admitting that Mr. Boott, with the aid of clerks in the house, kept proper accounts at that time, this was ten or a dozen years before the period, to which I refer. It would

seem, too, that while he was a member of the firm of Boott & Lowell, beginning in 1822, [B. p. 111.] his accounts of receipts and payments, as guardian, were kept for him in the books of that house ; for Mr. Lowell furnishes us with entries, from their cash book, in April, 1822, of some of the very items, which appear in these probate accounts of 1835. [L. p. 69.] But that firm was dissolved in 1824 ; [L. p. 28.] and after that, where was Mr. Boott's accountant? and where were his accounts ?

Mr. Lowell tells us, that he is informed by Judge Loring, that they " were annually made up and submitted to Mrs. F. Boott, the investments being explained, and thoroughly understood and approved by her." [L. p. 99.] But, if Judge Loring is rightly quoted, of what period does *he* mean to speak, from any knowledge of his own ? His marriage, with one of the wards, was in 1831. The time of Mr. Boott's strange mistake, respecting the amount he owed on these accounts, was in 1830. And what sort of accounts was he in the habit of showing to Mrs. Boott ? If they were like his probate accounts, they stated neither receipts from sales, nor payments for purchases, but only receipts for dividends and payments for expenses. It requires some skill in accounts, and a good deal of labour, to make out from them the actual state of the cash, and of the investments, at any particular date. In fact, the bulk of the capital, at this period, was not invested at all, but lay in the guardian's hands ; which is not apparent, to an inexperienced observer, on the face of the paper, because neither cash balances, nor investments, are directly stated, though the entries of dividends received enable one, who has skill and patience, to find out these matters, by a laborious process. The probate accounts, themselves, as made and settled in 1835, though probably correct in their results, are very inartificial and incomplete in their statements. This appears by the letters above cited from a competent accountant. They would furnish little light enough to Mrs. F. Boott.

The probability seems to be, that, so long as Mr. Boott was a member of either of the mercantile houses above-

named, his cash account may have been properly kept there, by somebody. After that, he may have had some memorandum of his stock transactions, and may have taken receipts from Mrs. F. Boott for moneys paid to her on account of his wards. He may have had some memorandum also, to remind him of the dividends he received. If not, they could be ascertained from the books of the corporations, whose stock he held. With such materials, he was enabled to make up such accounts, as he did make up, in 1834-5;—and Mr. Lowell knows very well, that there was trouble enough in getting them, at that time, into any tolerable shape for settlement. It is quite absurd, therefore, for him to pretend, that, after the dissolution of the partnership of Boott & Lowell, any books of account were kept by Mr. Boott, in a suitable state to inform himself, readily, from time to time, much less to inform others, how his affairs stood. If he did, how came he, in 1830, to state his liability, on these guardianship accounts, at more than fifty per cent. less than it was? Mr. Lowell must answer that question, and decide on the alternative.

CHAPTER XXV.

STATE OF MR. BOOTT'S AFFAIRS IN 1830. DANGER OF OPEN INSOLVENCY, AND OF TOTAL LOSS OF THE FAMILY PROPERTY.

I have now shown what Mr. Boott's assets were, as stated by himself, in 1830, (exclusive of stocks held specifically for Mrs. F. Boott and her children,) and that Mr. Lowell confirms the statement, out of his own knowledge, in every particular, adding nothing, except certain reversions, of which I shall presently speak.

I have also shown what Mr. Boott's debts and liabilities were, out of his own family, as admitted by himself, and by

Mr. Lowell, to the amount of \$101,000. I have further shown a probable liability, well understood at the time, though disputed now by Mr. Lowell, for \$50,000 more; and I have proved the fact, that one of the admitted liabilities was under-estimated, in my former pamphlet, by 26,000.

It remains to put these things together, with a fair valuation of the assets, to arrive at Mr. Boott's real position in 1830.

One statement, formerly made by me, has been treated, by Mr. Lowell, as if I had intended that for an actual *valuation* of all the property, made for the purpose of comparing it with the estimated liabilities. This is a mere misrepresentation.

My statement was this:— [B. p. 39.]

“The nominal assets in his hands, of every kind, were	\$213,000
But of these, the largest item, the investment in the iron foundry, was of very doubtful value, and scarcely available for an emergency;—it turned out nothing,	\$70,000
And the note of Mr. Robert Lilly, though eventually paid, was quite unavailable,	14,000
	— 84,000
Leaving, of available property, only	\$129,000
And of this, there were specifically pledged, for his private notes above mentioned, ninety-two shares of the manufacturing stock, estimated at	\$92,000
Leaving free, and immediately available, at its market price, property estimated at	\$37,000
Which was to meet his endorsement of	\$30,000
And the balance of his guardianship account,	20,000
And the general debts of Lyman & Ralston, in the event of their failure,	50,000—100,000 ”

I see nothing to correct in this, now, very material for the view I was then taking; which was stated thus:—

“So that he had, at that time, literally, *nothing to show* for the considerable estate, which he was supposed to hold in trust for his mother, brothers and sisters; and was in danger of insolvency, even if the whole property of the estate were appropriated to his use.” [B. p. 40.]

Mr. Lowell, after remarking on the “assumptions, as curious as they are manifestly unfair,” [L. p. 91.] supposed to be

contained in this estimate, concludes with the following comment :—

“Indeed his summing up shows liabilities of \$100,000, with available assets of only \$37,000 to meet it; in other words, a deficit of \$63,000!

It is astonishing that Mr. Brooks did not see, that the extravagance of such statements must defeat their object. How have things resulted?

Mr. Boott entered into no mercantile business or speculations afterwards; yet he paid all his debts, as enumerated by me above, amounting to -	\$167,000
And left a property, receivable at the death of his mother,	48,000
	<hr/> \$215,000

And this has been done, according to Mr. Brooks, not only out of nothing, but in the face of a deficit, in 1830, of \$63,000. If this were true, he has certainly shown financial talents, to which the history of commerce affords no parallel.” [L. p. 91.]

Now as to property receivable by Mr. Boott, *at the death of his mother*, (and which by the way, was never received, since he died in her life-time,) even if the expectation were worth, in 1830, the \$48,000, at which Mr. Lowell is pleased to rate it, I ask, what had that to do with his present assets available to pay debts with, and to keep good his trust fund? If the property, held in trust, were to be taken for the payment of his own debts, what would he have to receive out of it, at his mother’s death? In that view, and for that purpose, his reversionary interest in the *trust fund* was a mere shadow. I do not deny, that his share of a reversion, after his mother’s life, in certain *undivided real estate*, not belonging to the trust fund, (namely the mansion-house,) may, so far as that went, be called actual property, though to come into possession at a distant and uncertain time. But what is that species of interest really good for, in difficult times, as a security to raise money upon?

In the next place, let me call attention to the very curious process, by which Mr. Lowell makes up this sum of \$215,000. He says, Mr. Boott, after 1830, paid debts to the amount of \$167,000. What these debts were, we find, by turning to the “Reply,” at page 87. Among them, the reader will

see is the balance of the probate account of 1844, being \$120,284 55, less \$24,000 for the mansion-house, leaving \$96,284 55 of personal property, due from Mr. Boott, as executor. Now, this \$96,284 55 represents, so far as it goes, Mrs. Boott's *trust fund*, which being passed over to Mr. Boott's successor in the trust, at the settlement of his accounts, is thus counted as part of the \$167,000 of *debt paid*. To this \$167,000 of debt paid, Mr. Lowell adds \$48,000 for the property receivable by Mr. Boott, at his mother's death. But of what is that \$48,000 composed? It consists of three shares, one ninth each, of the reversionary property, which was to accrue to the heirs at Mrs. Boott's decease; namely, Mr. Boott's own original share, as one of the nine heirs, and the two shares of Mrs. Lyman and Mrs. Ralston, which he acquired as a purchaser, in the partnership settlement with their husbands. That reversionary property consisted of the mansion-house, *and the trust fund*. Consequently, the \$48,000 includes three ninths of the \$96,284 55, representing that trust fund, *which sum was already counted as part of the \$167,000 of debt paid*. That is to say, one third of \$96,000, being \$32,000, is counted **TWICE OVER**; once as a part of a **DEBT PAID**, and once as part of the **PROPERTY TO BE RECEIVED**, by Mr. Boott, at his mother's death. By this curious kind of double vision, Mr. Lowell arrives at his imaginary sum of \$215,000, supposed to represent the *assets*, which Mr. Boott must have had, in 1830, *before he began to pay off* the debt of \$167,000!

Having reached this ingenious point, Mr. Lowell, next proceeds to treat my figures as pretending to show an *actual ascertained deficit*, in 1830, of \$63,000; out of which *deficit*, he says, *according to me*, the \$215,000 of *assets*, *according to him*, must have been realized! No wonder Mr. Lowell considers "that the extravagance of such statements must defeat their object." And, yet, some of his readers have swallowed all this, coming from such eminent and accurate authority, as if it were a perfect mathematical demonstration of some ridiculous blunder on my part, instead of being, as it

is, either a very ridiculous blunder, or a very shameless imposition, on the part of Mr. Lowell.

Let us see, then, what I did say, fairly interpreted, concerning the alleged deficit of \$63,000, and how far that, which I said, was true.

My remark was, that Mr. Boott, in 1830, had "*nothing to show* for the considerable estate he was supposed to hold in trust for his mother, brothers and sisters; and that he was in danger of insolvency, even if the whole property of the estate were appropriated to his own use."

Now I beg to ask, first, what *had* he, at that time, *to show for his trust?* *Nothing* was held by him, *ostensibly*, as trustee or executor. Whatever he held stood in his own private and individual name. Mr. Lowell does not dispute that. Whatever he had pledged, had been transferred in his own name, as his own property. Mr. Lowell does not dispute that. What, of this *pledged* property, could he apply to his trust? Shares of manufacturing stock, already conveyed away to secure private debts, were out of his hands, and beyond his own control. These, certainly, were not available, at that moment, for trust purposes. He had not them *to show* for the estate. What they might have sold for, and what balance Messrs. Sturgis and Lowell, the pledgees, might have had to pay over from the proceeds, if he had failed, and had become notoriously insolvent, and they had been compelled to sell, in order to realize their debts, is another question, of which I was not then speaking. This sweeps off *ninety-two* of the one hundred and eleven shares of manufacturing stock, mentioned in the memorandum. We are then reduced, for the purposes of the trust fund, to the remaining items of that memorandum—the nineteen shares still unpledged, the foundry, the store, the stable, and Lilly's note. These were all the parcels of property left in Mr. Boott's hands, for the construction of a trust fund; and since there were pressing demands, from strangers, to be answered out of them, the question, as I put it, was, what were these *immediately available for, to turn into cash*, if needful, *to prevent a failure?*

The question was, how \$30,000 should, at once, be raised,

to meet the endorsed paper of Lyman & Ralston, then about to fall due ;—how other sums should be raised, to meet other debts, contracted in the name of Lyman & Ralston, which were soon to follow ;—and how a still further sum should be raised, to make good the deficit on Mr. Boott's guardianship account, regarded, on all hands, as a debt of honour, that must be provided for in full, even if we, who were consulted about it, and the other members of Mr. Boott's immediate family, should suffer. For this, I refer to Mr. Kirk Boott's letters. [B. App. p. 16–22.]

The first needful step was, to raise \$30,000, at once. In this view, I said, the iron foundry, though called \$70,000, in Mr. Boott's memorandum, “was of very doubtful value, and scarcely available for an emergency.” [B. p. 39.] I was wrong in adding the incidental remark, “it turned out *nothing*.” What it did turn out, will presently be seen. But was it available for this emergency? and available for enough, with the other means, *to prevent a failure*, if neither Lyman, nor Ralston, who had no property not already either embarked in the foundry, or lying in Mr. Boott's hands, had been able to raise any thing? Mr. Lowell affects to ridicule the idea that it was not. “As if,” says he, “a property costing \$114,000, which there is no pretence was then considered a bad investment, would not, at any time, have commanded a loan of less than a third of its cost!” [L. p. 90.] If this were so, will he be good enough to explain what the difficulty was, about meeting the endorsements, which so much agitated Mr. Kirk Boott?—and why it was, that a loan of so small a sum as *twenty thousand dollars* on mortgage of this property, being little more than *one sixth* of its cost, was the thing talked of, when \$30,000 was the immediate demand; and other sums were wanted? I say *twenty thousand dollars*, only, was the sum *talked of*, to be raised on a mortgage of that property. This is proved by Mr. Kirk Boott, who says,—“*If the loan is made of \$20,000, J. W. B. should insist, I do think, upon his proportion to be invested for the heirs of F. B.* And if this is not assented to, I do not think he ought *to join in the mortgage.*” [B. App. p. 19.]

But, says Mr. Lowell, “Mr. Brooks tells us, two pages after, that it was found that \$30,000 might be raised upon it by mortgage, adding, ‘as a friendly, rather than a business arrangement.’” [L. p. 90.] True, that sum was, at last, borrowed, in Philadelphia, by Mr. Ralston, from a member of the Ralston family, on this security; but it was entirely a matter of accommodation. It could not have been done *in Boston*, still less in Philadelphia, as a *business* affair. It will be remembered, that the property was, already, under a mortgage of \$2500 to Mr. Thorndike. It was only a *second* mortgage, that could be offered for a new loan. As a business loan, to be effected in Boston, on that security, \$20,000 was the utmost hoped for; and it was extremely doubtful whether that, or any considerable sum, could be got, as every business man, who remembers the state of financial affairs, here, in 1830, will readily believe.

In addition to general scarcity of money, we were all panic-stricken with the extensive ruin of great manufacturing establishments, and of wealthy persons connected with them, which had just occurred. The names of Dover, Ware, Canton, and many others, that might be mentioned, are an awful memento. Owing to the personal liability law, first repealed, or rather modified, in the year of which I speak,* a share in a manufacturing company was still regarded, by most persons, as a sort of plague-spot; and that species of property, when held by individuals unincorporated, was, with few exceptions, scarcely admitted to be security for any thing. What capitalist, in Boston, was ready to lend upon it? Mr. Lowell knows all this; and yet does not hesitate to mislead superficial readers, not likely to know or remember such things after eighteen years, by suggesting, *with a note of admiration*, the absurdity of supposing that a private manufacturing establishment, of no great note, and struggling under a load of debt, “would not, at any time, have commanded a loan of less than a third of its cost!”

Why even the Merrimack Manufacturing Company, which has always stood, preëminently, at the head of public favour

* Mass. Laws, of 1829, Ch. 53, passed Feb. 23, 1830.

and confidence, was, then, in so poor repute, that Mr. William Sturgis required forty-two shares of its stock, worth, in ordinary times, from fifty to sixty thousand dollars, to secure Mr. J. Wright Boott's note, then supposed to be a very good one, for \$21,000! And Mr. Lowell himself, with all his personal confidence in Mr. Boott, as well as in good manufacturing property, deemed twenty-five shares of the same stock, and as many more of the Boston Manufacturing Company, of which he was himself the Treasurer, (shares, which, formerly, had been freely bought and sold at \$1500 the share,) [L. p. 71.] to be no more than adequate security for his loan of \$30,000; though, three years before, he appears to have considered thirty-six shares of the two stocks abundant security for the same sum. [B. App.p. 30. 32. Also, L. p. 29.] Yet, he presumes to inform his confiding readers, with this evidence staring him in the face, that Mr. Brooks only makes himself ridiculous, when he calls the Mill Dam Foundry, a property then of "very doubtful value, and scarcely available for an emergency."

What I undertake to aver, as matter of fact, is, that it would not, and did not, at that time, command a business loan of \$20,000. I made applications, myself, on request of the parties, to several large capitalists, by whom that loan was refused; it remained doubtful whether any considerable sum could be procured upon that property, until, as a mere matter of friendly accommodation to Mr. Ralston, the loan of \$30,000 was, at last, made by one of his family.

Lilly's note, I said, too, "though eventually paid, was quite unavailable." This Mr. Lowell, also, treats as ridiculous,—especially because it "was secured by a mortgage of personal property;" [L. p. 86.] meaning, I presume, printing presses, and other stock of a bookselling, printing and publishing establishment. Mr. Lowell may impose on some readers in this way; but let State-street decide to-day, from its recent experience, what the over-due note, so secured, of a printer, not in the highest mercantile credit, and engaged in a business by no means prosperous, would be good for to raise money upon, at a moment of scarcity and alarm, when notes

not dishonoured, and certain from their character to be paid at maturity, have been lately seen, in a time of scarcity *without* alarm, to be selling at a discount of from one to two per cent. a month.

What is left? A store, good, perhaps, for what it was set down at in the memorandum,—\$15,000. It produced, after some improvement of affairs, in 1831, \$1000 more. A stable, rated by Mr. Boott, in the memorandum, at \$3000. It was appraised, fourteen years afterwards, at \$1500 only, and was actually sold for that sum, when real estate, there situated, had risen greatly in value. [B. App. p. 55.] In 1830, it probably would not have brought \$1000. Nineteen unpledged shares of manufacturing stock, viz. five of Merrimack, and fourteen of Boston Manufacturing Company. What were they worth in the market? The following certificate shows:—

CERTIFICATE.

"I certify the following market prices from actual sales, in August, 1830:

Merrimack Manufacturing Co. per share,	\$900 00
Boston Manufacturing Co. " "	666 67

CHAS. TORREY.

BOSTON, Aug. 13, 1849."

That is, the nineteen shares would have produced less than \$14,000.

Let us now put the available means together, and see what money could, at once, be raised upon them, for the purpose of carrying on the business of the foundry, and avoiding a failure.

From the foundry, I assume, that there might have been raised, on a business mortgage, at most	- - - - -	\$20,000
The store, by a forced sale, might have produced, not exceeding	- - - - -	15,000
The stable, do. do. do. do.		1,000
The nineteen unpledged shares,	do.	14,000
		<hr/> 50,000

What was to be met?

Debts, contracted in the name of Lyman & Ralston, to the amount of \$80,000, towards which they had nothing to contribute, except their interest in this foundry, and their claims, in right of their wives, on Mr. Boott himself. Was not Mr. Boott then in *danger* of utter insolvency, even if the whole family property in his hands had been appropriated to his use?

But, argues Mr. Lowell, this supposes \$92,000 of factory stock, which had been pledged for \$51,000 only, to be unavailable for any thing beyond it—"as if any creditor would refuse to take the right of redemption at its *full par value* of \$41,000!" [L. p. 90.] I beg to ask if Mr. Lowell would? when its *market value*, as the foregoing certificate shows, was only \$27,000.* And I beg to ask, further, whether it is usual for a man, *not* intending insolvency, but wishing to preserve his credit, and keep up his business, *to sell his right of redemption, in stocks held by other persons, who have lent upon them as much as they will bear?*

But Mr. Boott shall have the credit of this right of redemption also. I will add for it \$27,000 to the \$50,000 of assets above enumerated,—raising his immediate moneyed means to \$77,000.

Still, I ask, whether he was not in *danger* of insolvency, even if the whole property of the estate in his hands, so far as it was presently available, had been appropriated for his debts?

For, besides the debts of the foundry, as above,	\$80,000
he had to make good his guardianship debt, which	
I rated formerly at	20,000
<hr/>	
	100,000

* The shares pledged were forty-two shares of Merrimack to Mr. Sturgis, and twenty-five shares of the same to Mr. Lowell, i. e. sixty-seven shares, worth, at \$900 per share, \$60,300 00

Twenty-five of Boston Manufacturing Company, at \$666 67,	16,666 75
<hr/>	

Pledged for	76,966 75
	51,000 00
<hr/>	

Surplus value,	26,966 75
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<i>Brought forward,</i>	\$100,000
and that debt was, in truth, as now appears, <i>under-</i>	
<i>rated by</i>	26,000
<hr/>	
Total of debts, out of the family, to be met,	126,000
Total available assets, as above, including the sur-	
plus value of the pledged shares,	<u>77,000</u>
<hr/>	

And where is the *trust fund* all this while? Nothing is left for it, but Robert Lilly's unavailable note, and a right of redemption in an undivided third, or half, as the case may be, of the Mill Dam Foundry, subject to the supposed mortgage of \$20,000, and to a prior mortgage of \$2500. If we add to this Mr. Boott's own reversion in one undivided ninth of the mansion-house estate, (subject to his mother's life interest,) which might have been sold for a very small sum, we have the sum total of his available means.

Now I do not put this forth as an *actual deficit*, which events proved;—we know they, fortunately, proved otherwise. But, I say, this was *the palpable danger, in which he then stood*;—and that, with the losses and sacrifices, incident to an insolvency, had it occurred, the danger extended to the *sweeping off of the WHOLE family property*. And there is not an item, in the combination of elements making up this estimate of dangers, which Mr. Lowell has *ventured to question*, except Mr. Boott's liability for the *unendorsed* paper of Lyman & Ralston. There is nothing in the estimate, which he can shake in the smallest degree, unless he be able to show, by some evidence not yet produced, that we were all mistaken at the time, in supposing Mr. Boott liable for those debts, which I have estimated at \$50,000. If it could be made out that Mr. Boott was not liable for any part of them, this would diminish his total liability, out of the family, to \$76,000, and leave, from his above-stated available means for the paying of debts, (including the surplus value of the pledged shares,) about \$1000, to be added to the items above named as left for his trust fund. But, when the *estimated* assets and liabilities of an insolvent debtor

come to be so nearly balanced as this, I ask what, according to all experience, is likely to be the result of a forced liquidation?

I leave the reader then to judge, whether I have not given a perfectly fair and reasonable view of Mr. Boott's apparent position at that moment, in relation to danger of insolvency; and whether Mr. Lowell, instead of making me ridiculous, has not made himself so, by the manner, in which he has assailed my statement.

The "Reply" tells us, however, that, to recover from such a position as I represent, and have \$48,000 left, receivable at the death of Mrs. Boott, requires "financial talents to which the history of commerce affords no parallel." [L. p. 91.] Perhaps so. But the talents employed in the operation were, almost exclusively, those of Mr. Lowell.

The first step for Mr. Boott, after getting temporary relief by the friendly loan in Philadelphia, obtained by Mr. Ralston, was, to effect a settlement with Messrs. Lyman & Ralston, (who, with their Philadelphia friends, greatly overrated the value of the foundry and its business,) whereby they, with some other members of the Ralston family, became, under a corporate name, its sole owners, and *assumed its debts*. This, as they were not permitted to fail, relieved Mr. Boott, at once, from \$80,000 of his liability, and averted from him all danger of public insolvency, through the pressure of strangers. The settlement, also, entitled him to two thirds of the \$48,000 (supposing that valuation correct,) mentioned as receivable at his mother's death, since the reversionary shares of Mrs. Lyman and Mrs. Ralston, were ceded to him in that settlement. This bargain, Mr. Lowell says he made; [L. p. 109.] and an excellent one it was for *Mr. Boott* and his family.

The next step was, to gain time for the liquidation of the remaining debts, so as to avoid sacrifices, especially of the manufacturing stock, which yielded large income, and was likely to rise in value with returning prosperity. This was done through the friendly agency of Mr. Lowell, who became, at last, the *sole* creditor out of the family.

A third step was, to use the family property, whenever it became necessary to do so, for the payment of Mr. Boott's debts. This I do not say was *done* by Mr. Lowell; but the greater part of the payments was made to himself, and he could hardly be ignorant of the source, from which they came, unless he wilfully shut his eyes, or took an entirely false view of Mr. Boott's pecuniary position. Perhaps, from his present statement, we may be bound to presume that to have been the case. The reader, however, will be better able to judge of this hereafter.

The only remaining step for Mr. Boott was, to make up an executor's account, in a form, which seemed to bring his father's estate *in debt to him*, in a sufficient sum to cover the balance of *his debt to Mr. Lowell*, and to induce the heirs to accept that account in full settlement. For this, he certainly was indebted to the agency of Mr. Lowell.

C H A P T E R XXVI.

AN EXTRAORDINARY SPECIMEN OF FINANCIERING ABILITY.

The remarks in the foregoing chapter have anticipated the evidence on some points; but, if they are found to be borne out in the sequel, they will help, at least, to solve the riddle, which Mr. Lowell propounds, and to explain the kind and degree of "financial talents," which, with the aid of extreme indulgence and forbearance from every member of his family, freed Mr. Boott from the thraldom of debt, and made him the nominal owner of a handsome expectancy, to fall in at his mother's death.

But, it is time to turn to *Mr. Lowell's estimate* of affairs at the same period, and to see what assumptions, "curious," if not "unfair," we may find in that.

He takes Mr. Boott's memorandum and counts its foot as good property, (foundry and all,) for what it is set down at. He admits, that the valuation of the stable, at \$3000, was mistaken, and that it was eventually sold (i. e. fourteen years afterwards,) for \$1500 only. But, he says, "still if he [Mr. Boott] had made this investment in good faith, and for the benefit of the estate, he had a right to charge it at the cost." [L. p. 86.] Suppose he had, how would that help him to pay his debts to other people? So, of the manufacturing stock, on the same principle, it is said, he had a right to charge it to the trust fund at \$9000 more than the par value, because that was its cost to him; and Mr. Lowell adds this sum, accordingly, to the foot of the memorandum. Yet, instead of \$9000 *more*, it was then *worth in the market*, as we have seen, \$20,000 *less* than its par value. It was available for only about \$90,000, to pay debts with, instead of \$120,000, at which Mr. Lowell reckons it. Having thus rated the manufacturing stock at \$30,000 more than it was then worth, and the foundry at its cost, the stable at \$3000, and the other items as they stand in the memorandum,—

"This brings his *assets*," says Mr. Lowell, "to \$222,000
 "He had, *in addition*, his reversionary share of his
 father's estate, from which he would *eventually*
 receive \$16,000," [L. p. 87.] and he accordingly
 sets this down at

16,000

Bringing up the apparent *assets* to

238,000

The "reversionary share," here spoken of, is one ninth of Mrs. Boott's trust fund of \$100,000, and one ninth of the mansion-house estate, which, when sold, in 1844, produced \$46,000. One ninth of these two sums gives, the one a fraction more than \$11,000, the other a fraction more than \$5000, making Mr. Lowell's \$16,000 of *additional assets*.

Pause here, good reader, for one moment, and consider the extraordinary concentration of false assumptions in this single sentence of the "Reply."

To begin with the real estate. It produced in 1844, \$46,000. Mr. Lowell *assumes* that to have been its value in 1830. But the same estate had been appraised, in 1818, at \$24,000 only. [B. App. p. 13.] It had risen no doubt considerably, before 1830, but it had also fallen back again, as all real estate in Boston did; and dealers in that article will well remember its extraordinary depression at that time. It rose again, rapidly, from 1834 to 1837. The contraction of the currency then occasioned a sudden fall; from which it once more slowly recovered. In 1844, it had nearly regained the height of 1836. But in 1830, this estate was not worth more, at the very utmost, than \$30,000, instead of \$46,000, at which Mr. Lowell *assumes* it. One ninth of it, in present possession, at \$30,000 for the whole, would have been about \$3300. But it was subject to the life estate of a lady then about sixty-three years of age; and, by the common rule of the annuity table, the value of the *reversion*, reckoning interest of money at six per cent. per annum, was little more than fifty per cent. of the value in present possession. Mr. Lowell *assumes* the two values to be *identical*. The actual value of a ninth in reversion, if the estate were worth \$30,000, was about \$1700. Mr. Lowell sets it down at \$5000!

So as to the trust fund. One ninth of \$100,000, it is true, is about \$11,000. But, that \$11,000 was a property not to be reached, till the expiration of the life interest of a person then sixty-three years of age; and its immediate value, in 1830, subject to that postponement, was only equal to about \$5700. Yet Mr. Lowell *assumes* it to be \$11,000! Nor is that all. Its valuation, at \$5700, supposes it to be a property *certain to accrue* and come to hand, when the life estate expires. In other words, it supposes the \$100,000 to be *all safe and sound*, and securely invested. Mr. Lowell *assumes that too!* although it is the very matter in dispute; and although he himself admits, that there was *no* property, *then, specifically set apart* for a trust fund;—and although it is clear, that whatever Mr. Boott held, at the time, was subject to the claims of his other creditors;—and although the final probate account, prepared by Mr. Lowell in 1844, after all had been

done that could be, without disturbing Mr. Lowell's own security, to repair the damage of 1830,—admits the trust fund to be still *short*, nearly \$4000; and although, as will presently be seen, it was, at that time, (1830,) really defective by nearly \$70,000. Besides this, let me ask, what Mr. Boott's reversion, in a fund consisting of personal property in his own keeping, without even the ordinary security of a good probate bond,* even supposing the fund all safe at the time, was worth, as a saleable, or convertible market commodity? What would the purchaser be able to buy, except the *personal undertaking of Mr. Boott to account for it*, at some *indefinite time, perhaps thirty years distant?* What money lender, without any other security, would have advanced a dollar upon that?

But I have not quite done with this yet. Mr. Lowell, here, counts *the same thing twice over*, just as he had done before. He first reckons up and values *all the property*, of every description, which Mr. Boott had in his hands. He then argues, that \$100,000 of this property was for a trust fund; and that one ninth of that trust fund *would be Mr. Boott's own*, whenever the trust should end, by Mrs. Boott's decease. This being the case, says he, we must *add*, in 1830, to the \$100,000 held in trust, *one ninth* of that sum for Mr. Boott's *eventual share of it!* As if a *share of the fund itself were so much more property!!!*

Such is the way, in which Mr. Lowell builds up an aggregate of \$238,000, on one side of the account, and says, These are the assets! Let us see what he does with the other side of the account. He proceeds as follows:—

“And what were his debts?

He owed Mr. William Sturgis, for Mr. Cushing,	\$21,000 00
He owed me, for the estate of Jonathan Amory,	30,000 00
Balance of his account, as executor,	\$120,284 55
Less the mansion-house, included in that balance, but not in the assets above enumerated,	24,000 00
	—————
	96,284 55

* The sureties were Mrs. Boott and Mr. W. Wells.

<i>Brought forward,</i>	\$96,284 55
Due to the children of Mr. F. Boott,	20,000 00
<hr/>	
	167,284 55
Excess, being Mr. Boott's private fortune, if we rely upon the pencil memorandum, [L p. 87.]	70,715 45"

Now, here, the reader will remark, Mr. Lowell excludes, in the first place, *all* liability for the debts of Lyman & Ralston,—not merely for the \$50,000, which have been in question between us, but for the \$30,000 of endorsements also, about which, he admits, there was no question. He, next puts down the debt to the children of Mr. F. Boott at \$20,000, instead of \$46,000, as it really was. In that, it is true, he follows me, and I cannot affirm, that he knew better than I did. But, at any rate, it is so much mistake and under-estimate. He next assumes, that Mr. Boott owed to his father's estate only about \$96,000, for all the trust property, which was, or should have been, in his hands, that being the statement of the probate account of 1844,—the truth of which is the great question in issue between us. And thus, even if we lay aside that question, and take the probate account to be perfectly correct, it will be seen, that Mr. Lowell contrives, by reckoning the assets of 1830 at nearly \$100,000 more than they were worth,* and the *undisputed* liabilities at \$56,000 less than they come to,† to carve out, from these two excesses, an “excess” indeed, as he himself calls it, of \$70,715 45. And this, he says, was “*Mr. Boott's private fortune*, if we rely upon the pencil memorandum.”

After this exposition, I venture to hint, that Mr. Lowell

* Reversions, (being assets made out of the whole cloth,) Valuation of manufacturing stock above market price, Stable, over-valued, Foundry do. at least	\$16,000 29,000 2,000 50,000
	<hr/>
	97,000
	<hr/>

† Endorsements, Under-estimate of guardianship accounts	30,000 26,000
	<hr/>

56,000

might have appeared better had he been less obtrusive, in his "Reply," on the head of *assumptions*. Is it not amazing, that even the most devoted of his admirers should have suffered themselves to be led into captivity by such glaring absurdities, though put into the form of simple arithmetic, and announced with the air of a perpetual dictator?

It is true, that Mr. Lowell begins, as if he were putting all this forth under the guise of a mere piece of reasoning on the memorandum; and as if *that* were a statement, which he does not intend by any means to admit, but is willing to take as *my* statement to argue upon. Yet, we have seen what his own admissions are, respecting the truth of the contents of every part of that paper; [Ante. Ch. 21.] and we cannot but perceive, that he, immediately, turns his argument into positive valuation of assets, and positive estimate of liabilities, for the purpose of arriving at a particular conclusion, thus stated: "It cannot then be maintained, that Mr. Boott had *intentionally* used the property of his father's estate in the Mill Dam Foundery." [L. p. 87.]

The pamphlet, which the "Reply" purports to answer, did not undertake to maintain that he had. This is one of Mr. Lowell's devices for drawing away the attention of the reader from the real issue, by pretending to answer a charge, which nobody had made. And, after all, he does not answer that, which he assumes for the sake of answering, otherwise than by the absurdities above exposed.

My position was, that Mr. Boott, with good intentions, and from the best motives, had gone into this business, in connexion with two brothers-in-law, mainly to aid them; that he had been drawn in, by degrees, deeper than he at first contemplated; and that, as it turned out, this, in combination with other circumstances, occasioned great loss to his father's estate. Whether he originally *intended* to put the funds of the estate into this business, or not, was a point I did not discuss. I only showed, incidentally, that, upon a former occasion, Mr. Lowell not only admitted, by necessary implication, that Mr. Boott did, in point of fact, so employ the funds of the estate, but contended, that he was justified in doing so.

Indeed he went so far as to contend, that I had myself admitted this at the time, and to cite in proof of it a letter of Mr. Kirk Boott, which was found, on examination, to contain no such statement. [B. p. 129.] The "Reply" takes no notice of all this. Nobody, who had read that pamphlet alone, could ever have got from it the idea, that Mr. Boott had employed the estate's funds in this business, still less the idea, that Mr. Lowell had insisted that he was justified in doing so. Yet so it is, as he, who turns to my former pamphlet, will see.

I do not suppose it, now, material to settle what Mr. Boott's original *intentions* were in this matter; and it may be premature to discuss, as yet, even the question, whether or not he *in fact used* the funds of his father's estate in the business of the iron foundry, though Mr. Lowell's pretended demonstration of the contrary certainly goes far to show that he did. But it *is* material to consider, with reference to Mr. Lowell's estimates, and with reference to proceedings presently to be spoken of, the *principle*, upon which the "Reply" assumes to charge to the trust fund the manufacturing stocks *at their alleged cost*. This question may as well be disposed of now, as hereafter, but is proper matter for another chapter.

CHAPTER XXVII.

PRICE AT WHICH THE STOCKS SHOULD BE CHARGED IN 1830.
PRETENCE OF MERE INFORMALITIES. WHAT BECAME OF THE
STOCKS, HELD IN TRUST IN 1818.

The question of the price, at which stocks, or other property, should be taken, upon a retrospect of Mr. Boott's position in 1830, arises, at present, upon the supposition of a settlement to be made *as of the year 1830*, between Mr. Boott and his father's estate.

When a trustee invests, absolutely and distinctly, for his trust, I agree, that he is to charge the investment *at its cost*; and if, by the course of events, without fault on his part, it should become worth much less, he is not answerable for that; but, whenever he settles his account, he is to be allowed what he paid in the purchase of the investment. To entitle himself to that allowance, however, his first step is to prove, that the purchase was made, specifically, for account of the trust. For, if he buys for himself on speculation, and the article falls on his hands, it is plain that he cannot, then, turn it over to the account of his trust, and claim to have it taken at what he paid for it, instead of what it may then be really worth.

The ordinary proof, by the accounting party, of such an investment, is the production of a receipt for the money paid, with the certificate or other evidence of title to the property purchased, showing that it has been properly placed in his name *as trustee*. Mr. Lowell does not pretend that any such evidence as this could be offered in 1830. Now I do not say that *no other* proof can, or ought to, be accepted, under *any* circumstances; nor that the trustee ought to suffer for a mere omission of *form*. But that, which I do say, is, that the burden is, and ought to be, on him, to show, substantially and clearly, that the thing, which he seeks to charge at more than its existing market value, was actually bought, specifically, for the trust account, on which he seeks to charge it; and that it was paid for with the trust moneys, which he desires to have allowed to him in exchange for it. Let us then apply these common principles, which nobody can question, to the state of Mr. Boott's affairs as shown in 1830.

It is admitted by Mr. Lowell, that Mr. Boott ought to have had in his hands, \$100,000, at least, of trust money so invested. He only refuses to admit that there should have been, as I contend, a larger sum in trust. It is also admitted, that he had not one dollar invested in any thing by the *name* of executor, or trustee, or marked by any other *external badge* of a trust. He had a confused heap of real and personal estate, mentioned in his memorandum, all standing

in his own private name, as his own private property. Now I ask Mr. Lowell to select, out of this, what he pleases, and say what did belong to the trust, and what did not? This burden is on *him*, when he asks, for Mr. Boott, the privilege of a trustee, in charging to his trust account, in 1830, certain property at more than its then market value, on the ground that it had cost him more. Not one item, of all the property mentioned in the memorandum, is distinguishable from the rest, except the store in State-street, which was Mr. Boott's own, by gift from his father. Out of the residue, amounting, nominally, by the memorandum, to near \$200,000, *which*, I ask, are the *items*, that shall be taken to make up, in 1830, the \$100,000 of admitted trust fund? Mr. Lowell says, in effect, that the investment of this fund lay in the manufacturing stocks and the stable, when he says that Mr. Boott had a right to charge *them* to his trust, *at their cost*, notwithstanding they had fallen in value. These, then, are the specific things, which, according to Mr. Lowell, had been bought, by Mr. Boott, to the extent of \$100,000, with the moneys of his father's estate, and which were held by him, in 1830, to that extent of cost, specifically, for the trust, although he had neglected to preserve the ear-mark.

How can this be? We are to account for \$100,000. The stable, though valued in the memorandum at \$3000, had cost, according to the account of 1844, only \$2500. We must find the other \$97,500 of outlay in the manufacturing stock. There were, in all, by the memorandum, one hundred and eleven shares, rated at \$111,000, (the par,) but which, Mr. Lowell says, had, in fact, cost \$9000 more, making \$120,000, of which \$97,500, as his argument supposes, was the estate's money. But, which are the shares that represent it? Of the one hundred and eleven, it appears that ninety-two stood pledged to Messrs. Sturgis & Lowell, for personal loans to Mr. Boott. Mr. Lowell does not mean to say, surely, in order to make up the \$120,000 of cost, that the nineteen unpledged shares had cost \$97,500, and that the ninety-two pledged shares had cost only \$23,500. Does he then mean to say, that Mr. Boott had pledged, for his own debts, the *very same shares*,

which he had purposely bought with the estate's money, and which he held specifically as a trust investment, having merely omitted to *mark* them as such? If he does, he says a much harder thing than I had ever said of Mr. Boott; because it is plainly impossible that this should have been done, to such an extent, undesignedly. Yet, there is no escaping the fact, that the ninety-two shares were, and that a large part of them had been for years past, so pledged. And if we look to the transcript of the records of transfers of the two corporations, whose stocks are in question, we shall find that Mr. Boott, from the beginning, bought and sold, pledged and lent, these shares, at pleasure, and dealt with them in all respects as his own. [B. App. p. 30-33.] The only conclusion, then, consistent with that fairness of intention, which I ascribe to Mr. Boott, and with that perfect sanity and clearness of judgement, which Mr. Lowell claims for him, is, that he did *not* purchase these shares, *originally*, as a *specific investment* for his trust fund; and that Mr. Lowell does him great injustice, when he suggests that he did so, by claiming to charge them to the trust fund at cost, and by adding, on that principle, an advance of \$9000 above their par value, at a time when they were worth about \$21,000 less than their par, for the small object of bettering Mr. Boott's unfortunate condition in 1830, on the question of insolvency. Or was the real object to make a show of assets, which might bring out, more easily, for Mr. Boott, the apparent means of paying his debt to Mr. Lowell, without seeming to take for it the property of the estate?

If, then, the bulk of the \$100,000 trust fund was not lying in these shares, particularly, where was it? Mr. Lowell suggests nothing else, the stable excepted, as intended for a specific investment. The store was no part of the trust fund; that was, certainly, Mr. Boott's private property, devised to him by his father's will. Was the trust fund invested in the iron foundry, or in Lilly's note? There is nothing else left. But Mr. Lowell scouts the idea that Mr. Boott had put any part of his father's estate intentionally, into the foundry. That \$70,000, then, was not, according to Mr. Lowell, a spe-

cific investment of the trust fund, and no loss, arising out of that piece of property, could justly be borne by the estate.

We come down, then, to the little matter of Lilly's note. In respect to that, the "Reply" informs us that "the debt of Wells & Lilly was one, which had grown out of advances made by Mr. Boott, senior, to his son-in-law, Mr. Wells, and subsequent advances by Mr. J. Wright Boott himself." [L. p. 87.] Here, then, we touch something, which, according to Mr. Lowell, seems to have a smack of executorship about it. The \$14,000 was a debt, it would seem by his statement, which began with advances made by the testator, in his lifetime, and which advances were extended and augmented after his decease, by the executor.

Can this be so? The note was *payable* to Mr. J. Wright Boott *personally*; and it was *assigned*, soon after the time, of which we now inquire, by Mr. Boott *to me*, in trust, to secure, among other things, *Mr. Boott's own private debt* to the children of Mr. F. Boott. I formerly stated this, which Mr. Lowell does not deny; and I printed the trust deed in proof of it. [B. p. 42. App. p. 23.]

I collected, whilst I held this note, considerable sums, both of principal and interest, on account of it. These, by a separate agreement, were paid over to Mr. Boott, to be paid by him to Mr. Lowell, on account of *his own debt* in that quarter, as his receipts printed by me show. [B. App. p. 26-28.] And Mr. Lowell, pretending a suggestion from me, which I never made, nor imagined, that Mr. Boott had intentionally deceived me as to the application of the money, indignantly repels the charge, and assures us, now, that the money all went, *bona fide*, to the reduction of his debt; just as I intended it should. [L. p. 96, 7.] I added, in my former statement, that the *balance* of the note was finally collected, and applied by Mr. Boott to the payment of *his own private debts*; [B. p. 48.] and this Mr. Lowell does not pretend to question. How could this note, then, have belonged to Mr. Boott *as executor*, when he was all the while treating it, and its proceeds, as his own?

Besides all this, the probate account is, as Mr. Lowell as-

sures us, a *full* account of the *whole* executorship, from beginning to end; but he also assures us, that this note grew *in part*, out of advances made *by the testator* himself; yet neither the note, nor a particle of its proceeds, appears anywhere in that probate account. We must conclude, then, since Mr. Boott always treated that note as his own, and does not include it, nor any part of its proceeds, in his executor's account, either that Mr. Lowell is mistaken as to its origin, or else that Mr. Boott, considering it, as it was, a poor piece of property to hold as an investment for the estate, and desiring to accommodate the promiser, took it to himself, and accounted to the estate for the advances, which the testator had made upon it, although he has strangely omitted to state this transaction in the probate paper.

We are thus, reluctantly, but inevitably, brought to the conclusion, from Mr. Lowell's own statements, admissions, and arguments, that there was *nothing* in Mr. Boott's hands, in 1830, *traceable* as a *distinct* and *separate investment* for the account of his father's estate. If any thing contained in the memorandum of 1830 *can* be traced, by evidence not yet disclosed, to a purchase with the estate's money, for the specific account of the estate, it is incumbent on Mr. Lowell, who possesses all the evidence, so to trace it, when he assumes the right of charging it, in 1830, to the estate at its *cost*, although, it was, then, worth much less. And when it shall have been so identified as the estate's property at the original purchase, it will then be incumbent on Mr. Lowell to show when, and how, it afterwards became the private property of Mr. Boott, so as to account for his using it as his own. Until this shall have been done, I must be permitted to account for the use made of it, by assuming that it was *not* purchased specifically for the estate.

Where, then, was the admitted trust fund in 1830? Where could it be, but in Mr. Boott's own pocket? entering into all his affairs; mingled, inextricably, as an undivided interest, with all the property he held and all that was due to him, subject to all that he owed. In short, it was one hundred thousand dollars resting upon nothing but Mr. Boott's per-

sonal responsibility, and his probate bond, with two sureties, one of whom had very little or no property, and the other none, except an income from the trust fund itself, and a life interest in the house she occupied.

This Mr. Lowell is compelled to admit, in effect, when he seeks to apologize, as he does, for a fact, which he could not deny, in the face of the evidence I adduced. Speaking of his interview with Judge Warren, he says,

"I stated to him expressly, that I could not carry to Mr. Boott any proposal, that did not include a full and literal passage of his accounts as presented ; that Mr. Boott's honor was involved in this issue, and must not be perilled by me ; that I admitted that Mr. Boott had allowed stocks belonging to the estate to stand in his own name for several years, and that this I did not pretend to justify ; that I had, however, no doubt, that Mr. Boott believed himself, at the time, to be, as I believed him to have been, a creditor to the estate ; and that, until the moment of his having become alarmed about the solvency of Lyman & Ralston in 1830, it had never occurred to him as a possibility, that in so doing he was jeopardizing the property of the estate." [L. p. 35.]

Upon this passage, I must be permitted to inquire, in passing, in what way, and to what extent, Mr. Boott could, possibly, have believed himself, in and before 1830, to have been a *creditor* of the estate ; and how Mr. Lowell could possibly have believed it. The transaction, out of which the pretended cash balance, claimed by the account of 1844, arose, as alleged by Mr. Lowell, happened (we both concur as to the time,) in May 1831. [B. p. 43. L. p. 29.] I shall presently go into that matter more particularly. Just now, I have only to remark, that an event, which happened in 1831, could not have made Mr. Boott a creditor in 1830.

Apart from that transaction, how could the credit have arisen, unless from his advancing to or for the heirs, more than they were entitled to receive ? In no other form has an advance for the estate been suggested on either side. The account in question does not pretend it. I erroneously supposed, in my former statement, that the account of 1844 meant to claim the whole \$25,000, said to be due to the executor, as having sprung from that cause. But Mr. Lowell

has very clearly demonstrated that this was an error. He has shown, beyond dispute, that the account, strictly analyzed, really claims only \$3700 *as over-paid* to the heirs. But while it claims *this* as an *over-payment*, it does *not* claim that Mr. Boott is a *creditor of the estate* on that account, since the sum, so alleged to have been over-paid, is *taken from the trust fund* of \$100,000, which is thereby reduced to \$96,000 and a fraction, as Mr. Lowell has most satisfactorily shown. [L. p. 87.] Now, since the executor had no right to take from that fund, during the life of Mrs. Boott, and give to the heirs, he was in 1830, very plainly, by the admission of the probate account, a *debtor*, and not a creditor, to his *trust*, for that sum, with a claim over, it may be, upon the particular persons to whom the alleged over-payment went. They may have been, individually, Mr. Boott's debtors for it, if there had really been any such over-payment. The estate certainly was not. I cannot see, therefore, how the fact, which Mr. Lowell endeavours to excuse, is accounted for on the hypothesis suggested by him.

The "Reply" is, afterwards, still more emphatic, on the subject of the unfortunate position of the estate's property :-

"That Mr. Boott should have allowed stocks, which he had subscribed for as an investment partly for his trust funds, partly for his wards, and partly for himself, to stand in his own name un-separated, is certainly unjustifiable; and so I have at all times, and in all places, to himself and others, uniformly represented it. It will be remembered, however, that it was not formerly the practice of executors and trustees to make so careful a distinction of these forms as is now customary; and that merchants, especially, are much accustomed to owing, and having due to them, large sums on book account; and so long as their ledger balance is on the right side, no apprehension, or consciousness of irregularity, is entertained on this score." [L. p. 88.]

Now what have I ever said, up to this moment, which bears so hardly on Mr. J. Wright Boott as this? His professed friend and ardent champion, having been intimately connected with Mr. Boott in business, and necessarily acquainted with his habit of dealing in this respect, finds himself compelled, for his own vindication, lest he should be suspected of aiding

and abetting such irregularites, to avow, not only that Mr. Boott's allowing the trust funds to stand, undistinguished from his own, in stocks purchased partly for them, and partly for himself, was, in Mr. Lowell's opinion, "unjustifiable," but that he, Mr. Lowell, had so, "at all times and in all places, *to himself* [Mr. Boott] and others, represented it." Yet, up to the moment of threatened insolvency, and of actual inability to place the entire trust funds in security, Mr. Boott, regardless of these friendly remonstrances, persists in what Mr. Lowell declares to be an "unjustifiable" practice.

Do not my readers begin to suspect some strange obliquity of vision, on the subject of family property, and some peculiar notions about such a trust, in one, who is admitted, on all sides, to have been actuated, in most matters, by high sentiments of honour? Do they not, at any rate, begin to see, on Mr. Lowell's admissions, some evidence of mismanagement and incompetency for a trust of this character?

Mr. Lowell tells us, in excuse, that merchants in good credit and with a balance on the right side, are apt to overlook these little matters, and not to distinguish carefully, when they come to trust investments, between their own property and that of other people. I doubt whether Mr. Boott's failure, in that respect, can justly be turned off on the mercantile class as a body. But, perhaps, Mr. Lowell knows best. He thinks his readers will remember, however, "that it was not *formerly* the practice of executors and trustees to make so careful a distinction of these *forms* as is now customary." I am surprised that Mr. Lowell, a trustee for the public, as well as on so many private accounts, for a very large amount of property, should hold out the idea, that this mode of dealing with trust funds is a mere matter of *form*, or that he should think that Mr. Boott, acting on that principle, "faithfully complied with all the material provisions of the will," [L. p. 24.] and that he "was, in substance, whatever he might be in form, a remarkably good manager of trust property." [L. p. 97.]

If these are Mr. Lowell's notions of form and substance in the management of trust moneys, it is certainly right, con-

sidering his position, that he should thus publicly declare them. But I cannot readily believe, that these are Mr. Lowell's real sentiments. They rather seem to me the subterfuges of an indefensible case in the hands of a man of ability, but who is, unfortunately, afflicted with a constitutional weakness, which forbids him ever to admit any thing making against himself, or his argument, merely because it is true. He admits only when he is convicted, or when self-defence, on some other point, requires it. He admits, on the latter principle, that the practice now referred to is unjustifiable. But he admits it, only with a qualification, intended to cover the case in hand,—for he says that mercantile men, *formerly*, did not take the distinction, now generally conceded, between investing for one's self and investing for others. I should be very glad to accept that excuse, if it were true in the particular instance. But was it so with Mr. Boott?

The first item, (after the amount of the inventory,) in the account of 1844, is the foot of a former probate account, settled in 1818. The account of 1844 declares, that the amount of that *old* account was, *then*, (in 1818,) "invested in stocks, *to constitute the trust fund;*" [L. p. 38.] meaning not the fund of \$100,000 only, but, also, the additional \$11,111 12, directed by the will to be funded for the benefit of the testator's sisters. I showed this, formerly to have been intended, by the marked correspondence of sums,—the amount of investments, mentioned in that account (of 1818,) exclusive of premiums paid for the stocks, and separately charged, as an expense attending the formation of the fund, being exactly \$111,111 11. The premiums, added to the par of the stocks, make up the foot of the account of 1818; and that account specifies the several investments. [B. App. p. 14.] Now how were these several investments made by Mr. Boott?—In his own *private name?* or *in his name as executor?*

One of the items is five hundred and ten shares of the Suffolk Insurance Company. [B. App. p. 14.] The following letter from the President of the company speaks for that:—

LETTER FROM MR. P. W. HAYWARD.

"Office of Suff. Ins. Co.
Boston, 15th March, 1848.

DEAR SIR,

I find by the books of the Company, that on the first day of April, 1818, five hundred and ten shares were transferred to J. W. Boott, *executor*, which remained *in his name as executor*, until April 15, 1824, when he transferred them to Mr. Henry Cabot.

Very respectfully, your obt. servt.,

P. W. HAYWARD.

ED. BROOKS, Esq."

This investment, as *executor*, seems, by the foregoing letter, to have remained undisturbed for six years.

Another large item, in the account of 1811, is \$31,111 11 of U. S. 7 per cent. stock. [B. App. p. 14.] Here is a certificate, which accounts for that :—

7 PER CENT. LOAN OF 1815.

"JOHN W. BOOTT, EXECUTOR, OF BOSTON.

1818.	<i>Purchases.</i>	
April 1, From Kirk Boott & Sons, loan 1815,		\$16,577 20
" " Jno. W. Boott, " "		15,420 00
		<u><u>\$31,997 20</u></u>

1818,	<i>Sales.</i>	
April 30, To Henry Cabot, - - - -		\$886 09
1822.		
Oct. 1, " Boott & Lowell, - - - -		31,111 11
		<u><u>\$31,997 20</u></u>

I certify that the above is an accurate copy from the United States Loan Book, kept at the Merchant's Bank, Boston.

H'Y F. FLAGG, Acct."

The amount actually put, at first, into Mr. Boott's name, *as executor*, seems to have overrun, by a few hundred dollars, the exact sum named in the account; but this excess, it appears, was disposed of immediately, so as to leave in his hands, as *executor*, the particularly uneven sum, which the

trust required, within one cent. This stock seems to have remained, in the executor's name, for four and a half years, and then to have been transferred to the firm of Boott & Lowell.

By the same account, (of 1818) \$43,000 were invested in U. S. 6 per cent. stock. [B. App. 14.] So much of this as relates to the loan of 1813 is referred to in the following certificate :—

LOAN OF 1813.

"JOHN W. BOOTT, EXECUTOR, OF BOSTON.

1818,	<i>Purchases.</i>	
April 1, From Kirk Boott & Sons, 1813,	\$21,000 00	
		\$21,000 00
1819,	<i>Sales.</i>	
July 24, To Peter C. Brooks, guardian, \$3,500 00	\$3,500 00	
" " Moses Brown, 1,000 00	1,000 00	
" " Jno. Parker, 3,000 00	3,000 00	
		7,500 00
Aug. 24, " P. C. Brooks, guardian, 500 00	500 00	
" " Boston Marine Ins. Co. 13,000 00	13,000 00	
		13,500 00
		\$21,000 00

I certify that the above is an accurate copy from the United States Loan Book, kept at the Merchant's Bank, Boston.

H'Y F. FLAGG, Acct."

This stock appears to have been disposed of by the executor within a year and a half. The residue of the U. S. stocks, mentioned in the account of 1818, was, probably, in some loan of a different year, and I have not succeeded in finding the book, which records it.

The only other item of investment, named in the account of 1818, is two instalments paid upon two hundred shares of Suffolk Bank stock—the remaining instalments not having then become payable, as the account shows. For this stock, since it was incomplete, no certificates had then, probably, been issued. [B. App. p. 14.] The receipts, for the instalments paid, it may be presumed, expressed, that they were paid *as executor*;—since they would not, otherwise, have been

vouchers for that account. But it is probable, that Mr. Boott had subscribed, as he did in all other like cases of original subscription, which have come to my knowledge, in his own private name; and in this case, when the last instalment was paid in, several months after the settlement of his probate account, the certificate appears to have been filled up in his own name, without adding *as executor*, and to have been taken out by him in that form. How this should have happened, unless by an oversight, does not appear. The *fact* appears from the books of the Suffolk Bank, which I have examined.

But, with this single exception, of a certificate not received till after the probate account was settled, it appears, that every investment, mentioned in the account of 1818, of which a record has been found, was made distinctly *as executor*, and was clothed *by name*, as it should have been, on the *face* of the papers, with the *trust*, to which it belonged.

Not only so, but it appears by the foregoing certificates, that several of the stocks had, previously, been bought, either in Mr. Boott's own private name, or in the name of the firm of Kirk Boott & Sons, while he was liquidating the concerns of that house, and preparing to pay over *from* the house *to* the executor. But, when the proper point of time is reached, and the payment is made by the house,—when he is preparing to go into the probate court, not as surviving partner, but *in his capacity of executor and trustee*, for the purpose of *settling an account* there, he transfers these very stocks, *from himself*, and *from* the mercantile house, *to himself as EXECUTOR*, and takes out the proper evidence of that new title. How can Mr. Lowell, then, pretend, that Mr. Boott did not understand and recognize the duty of an executor and special trustee on that point?—or that it was not understood “formerly,” so far as *he* was concerned, as well as it is now?

The papers, which I have now introduced, lead to another remark. I complained, it will be remembered, originally, of the extreme generality of the probate account of 1844, as not giving proper information to interested and ignorant

parties, to enable them to see, whether the executor accounted for all, that he was bound to account for, or not, even admitting the literal truth of every fact directly stated in the account. The account showed the original formation of a trust fund, in 1818, by the purchase of certain stocks. It stated, in a single entry, certain gains and losses on the sale of those stocks, but did not show when they were sold, nor to whom, nor what was done with the proceeds. On these points we were left to conjecture and vague inference, from the single fact, that certain other property is stated in the account to be on hand in 1844; which property might have been purchased, directly, with these proceeds of the former stocks, and immediately upon their sale, or might have been purchased after twenty intermediate changes of investment, upon which gains, or losses, may have been made, not shown by the account. *The property is not traced*, by the account, so as to *connect its beginning and its end*.

The possible loss of books and papers has been suggested, by Mr. Lowell, as the cause of so unusual an omission. But, if that were so, the main facts could, nevertheless, have been supplied, to a great extent, if not fully. The same sources, at least, were open to Mr. Boott, and to Mr. Lowell, which have been open to me. And inquiry has now enabled me to fix the *dates*, which the account omits, of the several sales, and to show that the proceeds did *not* go, or at least did not *immediately* go, into the manufacturing stocks, which the account shows to have been on hand in 1844, although the account, by the paucity of its statements, leaves us to infer, that these manufacturing stocks *might* have been the immediate successors of the stocks sold, and suggests nothing else. Where *did* the stocks on hand in 1818 go? The U. S. 7 per cent. stocks, at least, went to *Boott & Lowell*, as appears by one of the foregoing certificates. And so did the two hundred Suffolk Bank shares, as the books of that bank show. All this, no doubt, has its explanation; and Mr. Lowell, as the surviving partner of the firm of *Boott & Lowell*, can of course give it. But why did not the fact appear on the face of an account prepared by Mr. Lowell, purporting to be, and

now represented by Mr. Lowell to be, a full and true account? And why, when the truth and completeness of the account are so seriously questioned, has this fact not appeared in any explanation yet given by Mr. Lowell, professing, as he does, to clear up its obscurities?

CHAPTER XXVIII.

MR. BOOTT'S POSITION IN 1830. MR. KIRK BOOTT'S LETTERS.

To return to the state of affairs in 1830. Instead of estimating only, as I formerly did, the amount of property held by Mr. Boott, which was *immediately available, to prevent a failure*, if Mr. Ralston had not succeeded in getting funds from his friends in Philadelphia, I propose now to make the inquiry, which Mr. Lowell seems to prefer. I ask, what, in that event, would have been Mr. Boott's real position, had *the failure occurred*, and had he been *compelled to come to a speedy settlement* with all his creditors?

For this purpose, I lay aside all question about indebtedness to his father's estate, *beyond* what the account of 1818 shows. That account admitted a purchase of stocks, for the particular trust funds required by the will, to the amount, including premiums paid, of nearly \$117,000; and since it appears, that, in 1830, there was no specific investment remaining on that account, Mr. Boott must be presumed, until Mr. Lowell shows the contrary, to have owed the whole of it to his father's estate. To the extent of \$100,000 for Mrs. Boott, this indebtedness is not disputed even by Mr. Lowell. He may pretend, on the theory of the account of 1844, that \$17,000, of the \$117,000, had been distributed. But that will appear, presently, to be an unfounded pretence; and I

claim, for the present, to set down, *as debt*, the *whole* sum, which Mr. Boott had invested for those trusts, and for which he had *nothing specific to show*, in 1830.

DEBTS AND LIABILITIES.

He owed, then, to his father's estate, for the trust funds, formed by the probate account of 1818, about	\$117,000 00
He owed Messrs. Sturgis and Lowell, together, as is admitted,	51,000 00
He owed to his wards of the F. Boott family, for prin- cipal and simple interest, as is proved by Mr. Tyler's statement,	46,000 00
He owed for his endorsements, on account of the Lyman & Ralston paper, as is admitted,	30,000 00
And he was liable to be charged, for other debts con- tracted in their name, on account of the foundry, according to my estimate,	50,000 00
Total debts and liabilities,	\$294,000 00

What were all his assets, set forth in his own memorandum, fairly worth? For this purpose, I estimate property at its market value, so far as it had a fixed market value. Other property I estimate at what it eventually produced, except the disputable items, Lilly's note, and the iron foundry. The former I take at *par*, the latter at its *full cost*. This is, certainly, a most favourable view for Mr. Boott; since it supposes him enabled to hold the least available property till it could be turned to advantage, and allows for the foundry much more than Mr. Lowell pretends to have got for it, and for Lilly's note more than it in fact produced, as will presently appear.

ASSETS.

71 shares of Merrimack Manufacturing Company at the proved market price, \$900 per share,	\$64,800 00
39 shares of Boston Manufacturing Company, do. \$666 67, do.	26,000 00
The store, at what it produced in 1831,	16,000 00
The stable, " " " 1844,	1,500 00
Robert Lilly's note, at par,	14,000 00
The iron foundry, at its cost to Mr. Boott,	70,000 00
	\$192,300 00

Should we *throw away* from the debts and liabilities, *every thing, which Mr. Lowell does not admit,* (except the increased balance of the guardianship debt, as proved by Mr. Boott's own accounts,) it would take from that side of the account only \$67,000,* and still leave to be provided for, the sum of \$227,000, with a fund of only \$192,300 to meet it.

The valuation of the assets Mr. Lowell, certainly, cannot complain of. It will appear, presently, that the two last items are valued, above, at about \$50,000 more than they produced.

Was Mr. Boott, then, at this time, solvent, or insolvent? Was he, or not, in *danger* of actual insolvency, even if the whole family property in his hands were appropriated to his use? Is it true, that there was no good cause of apprehension for the safety of Mrs. Boott's trust fund?

Mr. Kirk Boott's contemporaneous letters will be a fit conclusion to this part of the case. The reader may judge from them whether they support my "extravagant statements," or not. I print in Italics the parts, to which I desire to draw attention; and I have added a few notes, to show the bearing of particular passages. Some of these may anticipate subjects, which require to be discussed; but, in the mean time, they will inform the reader how I understood Mr. Kirk Boott's language, where it may seem obscure.

MR. KIRK BOOTT'S LETTERS.

Kirk Boott to Edward Brooks, September 26, 1830.

MY DEAR SIR :

I felt too jaded last evening to seek a private interview with J. W. B., [Mr. J. Wright Boott] and my affairs at Lowell rendered it necessary that I should get back as soon as possible. I have written him by this post, recommending him to *bend all his attention to making up an accurate account* of the works on the Mill Dam—observing that the course proper for him to pursue must depend, in good measure, upon the *state and value* of this property. *But that*

* Debt to the estate, not admitted by Mr. Lowell,
Debt of Lyman & Ralston, do.

\$17,000
50,000
<hr/>
\$67,000

the debt to F. B.'s children must be settled in full at all events; and that to effect this, should be his first and chief object.

It did not occur to me to inquire what are the relations of R. & L. [Ralston & Lyman] and J. W. B. with respect to the works on the Mill Dam. *Are they partners?* In whose name does the property stand? Has any incumbrance been made? If not, are there any means of preventing this property from being attached?

I have been necessarily so much from home lately, that I have much to attend to here; yet I will come down, if I can be of any use.

Very sincerely yours,
KIRK BOOTT.

Sunday, Sept. 26.

Kirk Boott to E. Brooks, September 29, 1830.

LOWELL, Sept. 29, 1830.

MY DEAR SIR:

If such a statement as you have recommended can be made up, which I fear J. W. [Mr. J. Wright Boott] will find almost impossible, it certainly would greatly facilitate the settlement. The truth may be approximated, if not correctly ascertained. The immediate difficulty appears to lay with R. & L., and *J. W. B.'s engagements on their account*. For, as they are *all partners* in as far as the M. D F. [Mill Dam Foundry] is concerned, if R. & L. are unable to meet their payments, or get their notes renewed, there is fear that the *whole* of this property may be *taken by attachment*.

To prevent the possibility of such an event, it does seem to me that prudence dictates that *they should join in an assignment*, provided such a measure can be taken without injuring the credit of R. & L. Were my mother *without company*,* I am by no means sure that a *general assignment* would not be best; but in this, I think she should have a voice. I feel confident that she anticipates difficulty, and do not believe that *finding her income greatly abridged*, would very seriously affect her. But to learn that *F. B.'s children were sufferers through J. W. B.'s agency*, would afflict her beyond measure. I thought, when I met you and R. [Mr. Ralston] the other morning, that he assented to the propriety of *that debt's being first paid in full*. At least, I considered his silence as acquiescing, and I told J. W. B. that this would be agreed to.

I had a note from J. W. B. last night, written in the greatest distress. He says, "if *that sum should not be paid in full*, I am *not only ruined in property*, but in *reputation forever*. I am indifferent about the future, as respects *myself, as to the means of subsistence*; but to *bear a brand of dishonor*, I cannot contemplate with composure. And besides, if the children *are paid in full*, and *this claim of*

* That is, as I understand, if it were not for the F. Boott children, who, it was thought, must be paid in full.

theirs also, the whole burden will fall upon my poor mother, who will have means so diminished that her comfort and happiness will be destroyed, and, if her mind should dwell much on her situation, you will see her health decline — perhaps destroyed.† I do wish now that THE PROPERTY was taken out of my hands, to be appropriated as I first pointed out.‡ I am bound hand and foot, and can do nothing of myself. It is, certainly, equally for the interest of the heirs that the fund left to my mother should be made good; it will come to them eventually."*

I have written to him a few lines, to say that I will be in town on Saturday, but how to advise or assist him is more than I can tell. *But for R. & L.'s affairs, I have no doubt that an assignment of ALL HIS PROPERTY, out of which F. B.'s heirs' claim should be FIRST paid, and the RESIDUE divided among THE OTHER CREDITORS, would be the most advisable course.*§ I am almost worried out. Committee after committee keep coming up in relation to the increase of the Appleton Works, or a new concern, for all of which many calculations are required, taking all my time, and, *since this unhappy disclosure, I get neither sleep or rest*, and after next week I shall commence the half yearly accounts of the M. M. Co. [Merrimack Manufacturing Company.]

I do not mention this with a view of avoiding any labor, which I will most cheerfully encounter, but to account for my not coming sooner to town. This state of *suspense* is worse than all the rest, *except the fears of J. W. B. as to character. I do hope R. & L. will not urge this claim*, if it can possibly be helped.

Ever very truly yours,
K. B.

Kirk Boott to Edward Brooks, September 29, 1830.

EVENING, Sept. 29, 1830.

MY DEAR SIR:

I wrote you this afternoon, to say that I would be in town on Saturday. Since then I have your second letter of the 28th. I cannot,

* Referring, as I understand, to the claim of Mr. Lyman and Mr. Ralston, that Mr. Boott should pay, on their several accounts, the sums due from him, as executor, for unpaid balances of the shares of their respective wives in their father's estate.

† Mr. Lowell pretends that there was no apprehension of any loss of the trust funds. Yet this is the language of Mr. J. Wright Boott himself.

‡ Mr. Lowell pretends that this does not mean the property, generally, in Mr. J. Wright Boott's hands, including what belonged, in equity, to his father's estate; but only the property of the iron foundry.

§ Who were the other creditors? Mr. Lowell pretends that Mr. Boott was not liable for debts contracted in the name of Lyman & Ralston; also, that he owed nothing, either to his trust fund, or to the heirs of his father's estate.

without a very gross dereliction of duty, leave home to-morrow — having several appointments with workmen, who cannot proceed without me. Besides, Mr. Colburn is from home, and I make it a point never to suffer both to sleep away from the Works, on any account whatever. I will use every exertion to see you on Friday. I am decidedly of opinion that J. W. B. should not join in mortgaging the M. D. F., unless he receives his full proportion of the sum raised upon it, to be applied to lessen his debts to the heirs of F. B.

I have every confidence in R., but in his necessities he may be induced to do what otherways he would not think of. I have no desire that he should yield any thing improperly, but it does appear to me that *this debt of honor should be, if only for the sake of my mother, taken care of.* It is evident that a speedy decision is at hand. If I can get away, however late to-morrow evening, I will.

Ever Yours, truly,
K. B.

Kirk Boott to Edward Brooks, October 10, 1830.

SUNDAY, Oct. 10th, 1830.

MY DEAR SIR :

I learnt with surprise, last evening, from R., that nothing had yet been determined upon. Immediately on the receipt of your last letter, I wrote briefly to J. W. B., stating the reasons why it was expedient he should join in the mortgage, and begged he would see you on the subject directly. I have been very busy ever since then, and having the house full into the bargain, must plead my excuse for not at once answering your letter. Indeed, I expected J. W. B. would see you at once, and thus render it unnecessary. Whatever course is judged best, should, it appears to me, be taken directly, as *delay* can do no possible good, and *must be attended with danger*.

Ralston judges favorably of the business on M. D., and I confess it looks less desperate on paper than I expected. Still it is an up hill business, with such a load of debt. Yet, with economy and perseverance, it may be surmounted.

I shall be in town on Thursday, till when,

I am truly yours,
K. B.

Kirk Boott to Edward Brooks, date uncertain.

TUESDAY EVENING.

MY DEAR SIR :

I was never more surprised than at the misunderstanding between Mr. A. Ralston and myself, after a full explanation with Rob't. [Robert Ralston, Jr.] He and Ash. [Mr. A. Ralston] took me aside in the evening, and observed that, with \$10,000, he thought

they might get along; and as the *pressing debts were all in the family*,* they might be postponed. In the morning, Ash. proposed to me that L. & R. [Lyman & Ralston] should dissolve, and that J. W. B. should take charge of the M. D. F., and Rob't, the business in town. I left him to propose this to J. W. B., in whose presence I wrote you my letter. I afterwards saw Ash., and told him only that J. W. B. would be guided by the opinion of his friends. The \$10,000 was to be raised between this and the first of Dec.; and it was thought it might be subtracted from the stock of the M. D. F. No further mention was made of a mortgage. The case is so full of difficulty that it is very hard to decide. *My own opinion is, that J. W. B. should at once assign ALL HIS PROPERTY first to secure F. B.'s heirs, and next THE ESTATE AND HEIRS OF MY FATHER.*† The endorsements for R. & L. are *no debts of his,*‡ and securing to them a just proportion of what *he may owe them as executor*, is all, under the circumstances, they can claim.§ With the disposition of the Ralstons to ease themselves (however natural) of as much of the burthen as possible, J. W. B *cannot, IN JUSTICE TO MY MOTHER, assist them*; and however desirable it may be to give time, *in delay there is great danger that he may not have it in his power to do equal justice.*|| Cannot an assignment be made and kept secret for the present, that would *bar attachment at all events, till we see the result of the accounts of the M. D. F.*? If Matt R.¶ cannot lose the amount he has advanced without failing, may he not, in spite of Ash., immediately attach? And Ash. never said he had power to act for Matt. I have no faith that L. & R. can possibly get along without *material assistance from the family*,** and I doubt much whether they will think it prudent to afford it. *He admits that the debts of L. & R. are \$80,000; and do you not think it probable that they will turn out more?* How is it possible for them, with *doubtful credit*, to carry on their business with such a load? If the loan is made of \$20,000, J.

* Meaning, as I understand, the Ralston family.

† Such was Mr. Kirk Boott's opinion. Mr. Lowell's opinion, as he now states it, is, that the trust funds were all safe, and that the heirs had been already over-paid by \$3700!

‡ Not that he was not liable for them to the holders; but that, as between him and his partners, they were debts which L. & R. ought to take care of, provided he should secure to them, rateably with the other heirs, as far as his means would go, what he owed them from his father's estate.

§ It is plain from this, that Mr. J. Wright Boott's condition was understood to be one of insolvency; that a rateable distribution would be necessary; and the idea appears to have been, that the loss should be apportioned upon Mrs. Boott's trust fund, and upon the debts presently due to the respective heirs.

|| That is, that his creditors, for debts contracted in the name of Lyman & Ralston, might, by attaching his property, prevent the rateable distribution, which was proposed for the benefit of *all* his creditors, including the heirs of his father's estate.

¶ Mr. Mathew C. Ralston, one of the creditors of Lyman & Ralston.

** Meaning the Ralston family.

W. B. should insist, I do think, upon his proportion, *to be invested for the heirs of F. B.* And if this is not assented to, *I do not think he ought to join in the mortgage.* My mother and Ann, with Miss K., are coming up here to-morrow. *I feel that if left alone, by any chance, with my mother, that I shall hardly be able to contain my feelings.* But until some course is decided upon, *it would be highly improper to make any partial disclosures, and I shall put a bridle upon my feelings.*

Do decide for us. If a *secret assignment* can be *legally made*, it does appear to me it ought.

Yours truly,

K. B.

This is a very disconnected epistle, but I am hurried and disturbed beyond measure.

Kirk Boott to Edward Brooks, May 22, 1831.

LOWELL, May 22d, 1831.

MY DEAR SIR :

Accompanying yours of yesterday, *I had one from J. A. L.* urging me to come down.* Were it possible, I would have left home this morning. But I have been literally in torture since Friday, from an attack of acute rheumatism, which settled in my lame shoulder, arising from a severe cold taken on Thursday. This has confined me to the house, and still does ; but as the pain is shifting to the arm, I am in hopes to be able to see you on Thursday, on which day, if possible, I will be in town. I have no copy of my letter to Wright ; it was penned in great pain, and under an *overwhelming impression* derived from a conversation with J.,† that *L. & R.'s failure was at hand.* It was in consequence of a desire on the part of Mr. T.‡ to discount L. & R.'s paper at the Bank. that R. urged an examination of their affairs. *Mr. J. was a party to it, and it resulted in a conviction that they were not entitled to any credit*, and such was Mr. J.'s report to Mr. T. Now such an occurrence as this, in which R.'s statements alone were taken, *being immediately followed by J. W. B.'s resignation, for which no adequate motives could be OPENLY assigned*, did not, in my mind, admit of a doubtful interpretation.§ Wm. A.|| had already made the application, and several others strongly suspected the cause. *J. A. L. also had observed to me, that he did not think that the sacrifice of J. W. B. would be of any service to L. & R.*

* Mr. John Amory Lowell.

† The late Mr. P. T. Jackson.

‡ Mr. Tilden, then President of the Columbian Bank.

§ Mr. Lowell infers, from my having formerly printed this in Italics, that I supposed the "resignation" to refer to Mr. J. W. Boott's executorship. What "resignation" was alluded to, appears on the next page, namely, that of the agency of the Suffolk Manufacturing Company.

|| Mr. Wm. Appleton.

With regard to making provision for the *endorsements*, I am clearly of opinion, that however desirable it may be on all accounts, that *it should only be done with my mother's full concurrence. That an estimate, not over-stated, of her resources should be shown her, and that her opinion should decide.**

If L. & R. fail, how is Anne and her children, and Mary, to subsist, unless my mother can give them temporary shelter? and *without some income*, how is this to be done?†

The *mortgage* of the Mill Dam, I presume, *is made entirely for L. & R.'s debts,*‡ and if the property is worth only half what they estimate it at, *this will cover any demands they have upon J. W. B. as executor.* His *reversion* of the estate, which he says he will never touch a cent of, might be *pledged as security for his endorsements*, and in justice, perhaps, this is all that the R.'s [Ralstons] can claim.

But perhaps I may be in error. I do not, under all circumstances, think it *very important* that J. W. B. should *take the agency of the Suff. Co.*§ My wish would be to have him sent to England for the Rail Road. This would take a year, and to procure the agency of the new concern|| for him on his return. The advantages of this course are, that such a change would *turn the whole current of his ideas*, throw him much upon the world, and afford him an opportunity of procuring much information that is wanted, and which would give him a consideration with those concerned with us. He is admirably qualified for this purpose, and I do hope and believe it all might be effected. At all events, it could be speedily ascertained. The new concern, too, would be a much better field for him.

If it is necessary to act, *I should greatly prefer the assignment at once;* but provided my mother is made acquainted with the state of affairs, and *acquiesces*, in any course you will recommend, *I hereby pledge myself to you to consider myself a party, and to abide by and acknowledge as my act, whatever deed you may conclude upon.* I write in great pain, and in a very constrained posture, and cannot take a copy of this; yet do not destroy it. *I am sensible fully as to the trouble and delicacy of this business to you, and regret its necessity;* but I cannot help it.

Yours truly,
K. B.

* Why so? Simply because it was certain that Mr. J. W. B. could not raise \$30,000 to take up the endorsed paper, and also pay his debt to the F. B. children in full, without encroaching deeply on Mrs. Boott's trust fund.

† This shows, clearly enough, the *extent*, to which Mr. Kirk Boott apprehended the ruin might go.

‡ See note † to the preceding letter, p. 278.

§ The Suffolk Manufacturing Company, then about going into operation.

|| A new company then in contemplation; afterwards called the Lawrence Manufacturing Company.

Kirk Boott to Edward Brooks, date uncertain.

MY DEAR SIR:

I saw R. R. [Mr. Robert Ralston, Jr.] yesterday afternoon, and explained to him very fully that the plan he proposed for raising money on the M. D. F. could not be assented to. That in any event, *J. W. B. felt it to be his duty to assign over his property for the security of all his creditors; and that in so doing, it seemed impossible but the M. D. F. must be stopped. That however well his statements looked on paper, it did appear to me there must be some fallacy in them. And that as far as I could see, it was doubtful whether any profit had yet been derived from carrying on their works.*

He was evidently seriously alarmed. In the evening, Ash. and he took me into the library. Ash. remarked that *all the debts coming due were to his family*, and that they might be postponed; and that if it were possible to divide the stock there into shares, he thought it would be possible to induce some of his creditors to take shares for their debts; and that he would himself. *That J. W. B. should have his proportion; and that if this were accomplished, he might then hypothecate them without stopping the Works.* This morning he proposed to me the following: *That Lyman should convey to R. R. all his interest in the M. D. F., as well as any claim upon J. W. B. as executor, and his reversionary interest in the estate.* That the partnership should be dissolved. That the stock should be made a joint concern. *That J. W. B. should take charge of the Works, and R. R. manage the business in town.* That \$10,000 should be withdrawn as soon as practicable, to pay cash advances, made by Matt. and that he would undertake that the other debts should lay for years, and be reduced out of the profits of the concern.

I replied that if this could be effected *without rendering J. W. B.'s creditors* more insecure*, I saw no objection to it. But that in the meantime, some competent person should make out a statement of the affairs of the M. D. F. *If a profit could be shown adequate to their support, and to the gradual liquidation of the debts, it might be a judicious course; but if otherwise, I felt assured that J. W. B. would not consent.* To accomplish this, I am to send down Tufts, my Clerk, and upon the result we could determine whether this course ought to be adopted.

Suppose this course to be adopted, could not J. W. B. assign all his property? a course he is very anxious to take — as he fears in their distress, they (L. & R.) may be driven to attach.†

Pray let me hear from you. I am obliged to go home to-day, but will return to town any time, at a day's notice.

Sunday morning.

Very truly yours,
KIRK BOOTT.

* His wards, and the heirs of his father. I know of no others, who were not creditors of Lyman & Ralston.

† What did he fear that L. & R. might attach for, except the debt due to them as heirs, which Mr. J. Wright Boott viewed as borrowed money, for which he had made himself personally liable to them?

C H A P T E R X X I X .

MR. BOOTT'S POSITION IN MAY, 1831. CIRCUMSTANCES LEADING
TO THE ARRANGEMENT OF THAT DATE WITH MR. LOWELL.

From the letters of Mr. Kirk Boott, now laid before the reader, it is pretty clear, how extensive a ruin was apprehended by him. The *last* letter is without date. That, which immediately precedes it, bears date May 22, 1831.

This brings us to a point of time extremely material,—the time of the transaction, out of which, Mr. Lowell informs us, grew the alleged “cash balance” of \$25,000 “due to the executor,” according to the account of 1844. This transaction is another circumstance, deserving careful consideration in determining the reality of that account, and the truth of its apparent cash balance. The transaction was, that the shares of manufacturing stock, held by Mr. Lowell in pledge, for a personal loan of \$30,000, made by him as trustee under the will of Jonathan Amory to Mr. Boott, in 1827, were, at this time, transferred by Mr. Lowell to Mr. Boott, *as executor*, and were immediately *re-transferred* by Mr. Boott, *as executor*, to Mr. Lowell, trustee, for the security of the same debt. [B, App. p. 30–33.] No part of the principal of the debt had been paid, though interest had been kept down.

This transaction, as stated by me, and proved by the records of transfers above referred to, is confirmed by Mr. Lowell; but we differ, materially, in our respective statements of *what passed between us* at the time concerning it, as we do in our respective constructions of the *effect* of the transaction. This is the instance before referred to, (I believe the only one,) in which Mr. Lowell has ventured to contradict, directly, my statement of a conversation with him. It becomes important, now, to determine, from the circumstances, which of us is most likely to be accurate here, assuming that neither intends a deliberate and direct falsehood.

I will first state what material facts had occurred, since Mr. Boott's disclosure to me of his affairs, in August or September, 1830. Some eight or nine months had elapsed. The letters of Mr. Kirk Boott, above printed; indicate the state of feeling and apprehension existing during those eight or nine months, and some of the measures proposed. The mortgage of the Mill Dam Foundry to Mr. M. C. Ralston had been effected, in the latter part of October, 1830, as appears by the recorded deed. This had raised a loan of \$30,000, which went to diminish the pressing character of the debt, contracted in the name of Lyman & Ralston. I believe no part of the money had been applied (though Mr. Kirk Boott had thought that ought to have been insisted on,) to diminish the private debt of Mr. J. Wright Boott to his wards of the F. Boott family. A particular necessity, however, for some partial payment in that quarter, had arisen, about this time, in consequence of the marriage of one of his wards. Such a payment was made, probably out of the proceeds of the sale of the store, which occurred, as I find from the registry of deeds, February 22, 1831. And that sale, amounting to \$16,000, must have furnished means to lighten Mr. Boott's position still further. With these exceptions, his indebtedness and his liabilities remained unchanged, so far as I know, at the time of the writing of Mr. Kirk Boott's letter of May 22, 1831. Assignments of property, either general to secure all his creditors, or to secure his particular trust creditors, had also been suggested by Mr. Kirk Boott, and by Mr. J. Wright Boott himself; but none had been made. The endorsements of Mr. J. Wright Boott, on the Lyman & Ralston paper, had not been extinguished, or they had been succeeded by new ones, as the above-mentioned letter, which speaks of his then existing endorsements, shows. The moneys raised, however, from the sources above indicated, had procured temporary relief, and postponed our anxiety.

In the mean time, some arrangement, for the withdrawal of Mr. Boott from his connexion in business with Lyman & Ralston, had been thought, by his friends, extremely desirable, if practicable; and, with that view, Mr. P. T.

Jackson and other influential friends, had obtained for him a new employment in the agency of the Suffolk Mills, then about to be established at Lowell. He accepted the appointment to that agency, as Mr. Lowell informs us, Jan. 12, 1831, but again resigned it, as Mr. Lowell also informs us, May 15, 1831, [L. p. 85.] under circumstances, to which I shall presently advert. The engagements of Lyman & Ralston, involving Mr. J. Wright Boott, had begun to press again, with renewed urgency. Their failure, notwithstanding all that had been done, was supposed to be at hand. This appears by the last mentioned letter of Mr. Kirk Boott. Whether the failure of Mr. J. Wright Boott, who was not an *ostensible* partner in their firms, though an endorser of some of their paper, and implicated in all their engagements connected with the business of the foundry, must necessarily follow, or at what sacrifice of other interests in his hands it might be prevented, were serious questions, which Mr. Kirk Boott and myself were compelled to consider. Mr. Lowell became a party, with us, to the consultations of that period. Mr. P. T. Jackson, also, from the interest he took in Mr. J. Wright Boott, and in the Suffolk agency, was partially admitted to our counsel. At this juncture, Mr. Kirk Boott wrote to me the letter of May 22, 1831, which the reader has already read. It will be remembered, that instant failure of Lyman & Ralston was therein apprehended; that an assignment of all Mr. J. Wright Boott's property, had been recommended, "first to secure F. B.'s heirs, and next the estate and heirs of my father;" and that the letter concludes as follows:—

"If it is necessary to act, I should greatly prefer the assignment at once; but provided my mother is made acquainted with the state of affairs, and acquiesces in any course you will recommend, I hereby pledge myself to you to consider myself a party, and to abide by and acknowledge as my act, whatever deed you may conclude upon. I write in great pain, and in a very constrained posture, and cannot take a copy of this; yet do not destroy it. I am sensible fully as to the trouble and delicacy of this business to you, and regret its necessity; but I cannot help it.

Yours, truly,
K. B."

Thus, it is seen, that, owing to Mr. Kirk Boott's confinement at Lowell by illness, the delicate task was thrown upon me, alone, of determining what should be done, in these alarming circumstances, to preserve the family interests, and to shield Mr. J. Wright Boott, as far as circumstances would permit.

It should be borne in mind, that, during all this time, no further disclosure had been made by Mr. J. Wright Boott to me, since that of August or September, 1830, respecting the condition of his father's estate, nor had any been made to Mr. Kirk Boott, as I think I am authorized to say, from the very confidential intercourse between us on these subjects.

Mr. Lowell, indeed, endeavours to throw some of my statements on this head into doubt, when he protests against my use of Mr. Kirk Boott's name, and says, "Mr. Brooks will hardly claim a more intimate acquaintance with Mr. Kirk Boott's views and feelings than I enjoyed." [L. p. 196.] On most subjects, certainly not—particularly not in relation to matters of business with strangers, and topics connected with the kind of business, in which both Mr. Kirk Boott and Mr. Lowell were engaged. But, in regard to mere family interests, and to the relations of Mr. J. Wright Boott to others of his own family, and with regard to his general position and conduct as the family trustee, circumstances of common concern, added to long personal friendship, had established between me and that gentleman, an especial confidence and freedom of communication, which it would have been very strange, if he had imparted, with equal facility, to Mr. Lowell, or to any other friend out of the family.

The letters, which I exhibit, sufficiently vouch for what I now say. On all that class of subjects, I may safely claim to know what Mr. Kirk Boott knew and thought, as far as one man can ever claim such knowledge from great intimacy with another, distinguished for his frank character and honourable dealing. And I undertake to say, with perfect confidence, that Mr. Kirk Boott was no more informed than myself, by any communication of that period from Mr. J. Wright Boott, respecting the amount of his indebtedness to his

father's estate and the condition of the family property. To believe otherwise, considering what has passed between us, would be a reflection on the memory of Mr. Kirk Boott.

It will not be pretended, that any heir, or member of the family, except Mr. J. Wright Boott himself, knew more than we did. Such were his peculiarities, and the feelings of the family towards him, that nobody attempted to penetrate his reserve. It would not have become me, certainly, to approach nearer than his own brother, who was an older man than myself and of more experience in business. We, all, habitually, waited Mr. J. Wright Boott's voluntary movements respecting family affairs.

What then was the extent of my knowledge of the amount of the family property? On the evening of my marriage, Mr. Boott had volunteered to inform me, that I might shortly expect about \$20,000 in my wife's right. He had, on several occasions, given like information of a prospective dividend to other heirs; and all the unmarried members of the family had been given to understand, that their personal allowance for income was \$1200 a year—the interest of \$20,000. They lived, accordingly, in that belief. I had reason to believe, though never informed of the fact by Mr. J. Wright Boott, that more than one of the heirs had, long before that period, realized the full dividend of \$20,000. To me, Mr. Boott had paid, by note, and to Messrs. Lyman & Ralston in money, \$10,000 each, expressly *on account*. The provisions of the will, appropriating, for the support of Mrs. Boott and of the testator's sisters, \$111,000, indivisible during their lives, were, of course, matters of notoriety.

I knew, besides, from Mr. Kirk Boott, that heavy losses had been sustained by the former house, in which he and Mr. James Boott had formerly been partners with Mr. J. Wright Boott. The amount of these losses I did not know, nor what amount of private fortune, previously acquired, Mr. J. Wright Boott might have had to draw upon against these losses. But, from the disclosure made in 1830, it had become apparent to me, and to Mr. Kirk Boott, that, after accounting for the unpaid residue of the paternal estate, as it had always

been understood and represented in the family, there was not only no private fortune left to Mr. J. Wright Boott, (unless in reversion,) but that more or less of funds of the estate had gone into the business of the Mill Dam Foundry, and that it was impossible, that this business should be wound up, in any way, without great loss to the family property. The fear, as the letters above cited show, was, that the loss might extend even to the destruction of the particular trust fund, on which Mrs. Boott was dependent.

Most of the foregoing statements, I am aware, are impugned by Mr. Lowell. I shall not omit to consider his comments upon them. But at present, I allude to these matters of fact, in anticipation, only for the purpose of showing, what the knowledge, or understanding, on my part, was, of the amount of property, for which Mr. Boott was probably accountable as executor, when I was called upon, in May, 1831, to act, as I did act, under Mr. Kirk Boott's last cited letter.

Mr. Lowell, when taken into the family counsel respecting Mr. J. Wright Boott's affairs, was, undoubtedly, informed, I will not say of *all* the above particulars, but generally informed, at least, of the belief entertained by Mr. Kirk Boott and myself, that the estate was implicated to a dangerous extent, and that the loss, to be met, must be greatly beyond any private fortune of Mr. J. Wright Boott. This information Mr. Lowell certainly had from us, in addition to any knowledge of the family property, or of Mr. J. Wright Boott's own property, which he may have derived from his former connexion in business with that gentleman. And I must say, that there was no pretence, at that time, on his part, that our belief was not well founded. We heard nothing, then, of over-payment to the heirs, nor of the sufficiency of Mr. J. Wright Boott's private property to stand all the supposed, or anticipated loss.

In fear of a failure, the object I had to accomplish, plainly was, to disentangle, as far as possible, the affairs of the estate from the private affairs of Mr. J. Wright Boott, and to set apart, specifically, for the estate, and for his wards, (to whom

the estate stood surety,) such suitable portion, as the case would permit, of the property in his hands, the whole of which was then, equally, exposed to be taken by general creditors, for want of any thing to mark any part of it as a trust. Of all the items in Mr. Boott's memorandum, of 1830, it has been seen, that, upon the question, what was Mr. Boott's and what the estate's, one only could be distinguished,—the store, which was Mr. Boott's own. This had now, in May, 1831, been sold, and its proceeds had been applied, as Mr. Boott had seen fit.

In respect to the foundry, if the whole, or any part, of the \$70,000 and more, which had, at that time, gone into it, were considered to have come from the estate, still, it was certain, that the employment of the estate's funds in that trade, by an executor, was wholly unauthorized. The adoption of that act, in behalf of the estate, could not be thought of for a moment, by Mr. Kirk Boott, or by me ; and the property itself, (an undivided interest, subject to two mortgages, and, equitably as well as legally, bound for all the debts and liabilities of a partnership supposed to be insolvent,) was a thing to be especially avoided for a trust investment. At whatever loss to the estate, this investment of \$70,000 must, of necessity, as we thought, be set to the separate account of Mr. J. Wright Boott—making, with the \$16,000 realized from the sale of the store, a nominal property of \$86,000 to be treated as his. This is a considerably larger sum, than Mr. Lowell pretends, that Mr. Boott was ever worth. It followed, that *all* the remaining property, named in the memorandum, must be set apart to represent his several trusts, as executor of his father's will and guardian of the F. Boott children ; and that, if it were all clear of any private incumbrance, it would still be greatly insufficient to make good the debt to his father's estate, according to the ideas of the estate, which Mr. Boott had uniformly held out ; and since it was understood that the estate must answer, also, as Mr. Boott's surety, for the debt due to his wards, it was plain, that all this property, clear of incumbrance, would fail to pay off that debt, and leave enough to reconstruct the particular

trust funds, established in 1818, agreeably to his father's will, but afterwards broken up.

This I propose to make clear—because it is a key to the subsequent proceedings. What was the property I speak of? The manufacturing stock, Lilly's note, and the stable. What was it all worth at the time, of which I speak?

The market value of the manufacturing stock had risen considerably since August, 1830, as appears by the following certificate.

CERTIFICATE.

"I certify the following market prices from actual sales, in May, 1831 :—

Merrimack Manufacturing Co. per share,	\$1160 00
Boston Manufacturing Co. "	700 00

The Merrimack sale was *dividend on*. That is, the dividend, then declared, was sold with the shares.

CHAS. TORREY.

BOSTON, Aug. 13, 1849."

Lilly's note had, at this time, been reduced by a partial payment of \$966 61, (See Trust Deed, B. App. p. 23.) and had also been strengthened by a new collateral security, namely, a second mortgage made in October, 1830, of a building near Boylston Market Place, in which the printing office, formerly of Wells & Lilly, had been kept, and a mortgage of certain articles of personal property appertaining to that establishment. This appears by the recorded deed. Notwithstanding this new security, the note was worth considerably less than its face, as the event proved.

I formerly stated, that it was eventually paid in full; which I then supposed to be the fact. Mr. Lowell takes care to follow my error, instead of correcting it, as he affects to have done in so many other cases of supposed errors committed by me. He states, positively, that it was paid in full. [L. p. 86.] From the evidence, which has recently come to my knowledge, it seems that this is another of Mr. Lowell's mistakes.

I formerly showed that the note was held by me in trust for several years, during which interest was kept down, and

some partial payments were made on account of principal; and that, about the time of the settlement of Mr. Boott's guardianship accounts, I restored the note to him. [B. p. 47-49. App. 26-28.] Never having heard the contrary, I supposed the balance had been paid to Mr. Boott, at or about the time of the settlement of his guardianship accounts, early in 1835. [B. p. 48.] But, I have recently discovered, that in October, 1835, Mr. Boott sold the note and mortgage, through a broker, to Mr. John Welch. The deed of assignment is recorded in the registry of deeds, and contains a special warranty from Mr. Boott, "that the sum of eight thousand dollars, *or upwards*, is legally due to me by virtue of the said note." It happens, that a suit is now pending, in the State of Maine, in which this transaction has become, incidentally, involved, and Mr. Welch, in an answer to a bill in chancery, states that, "some payments having been made on said mortgage, it was, at the time of the negotiation with said Abbott, [shortly after the sale to Mr. Welch] valued and calculated to be worth the sum of \$8500";—meaning, as I understand, that this was the amount due upon the mortgage. On application to Mr. Welch, I have obtained from him the following certificate, endorsed on an office copy of the deed of assignment.

MR. WELCH'S CERTIFICATE.

"For the purpose of strengthening my title to the real estate referred to within, I purchased from Mr. J. W. Boott, this assignment of Robert Lilly's note, and the mortgage to secure the same, and paid him therefor the sum of \$5500, October 6, 1835.

JOHN WELCH."

Boston, June 4, 1849."

This note Mr. Lowell represents, even *before the mortgage of the real estate had been made*, to have been such a perfect security, that he ridicules me for speaking of it as unavailable for an emergency, [L. p. 90.] though I supposed it to have been, as Mr. Lowell affirms it was, [L. p. 86.] eventually, paid in full. It now appears that this same note was, in fact, sold by Mr. Boott, *with the mortgage*, at a discount of about \$3000 from its face, after the debt had been reduced

The discount made, upon its eventual sale to

Mr. Welch, appears to have been 3,000 00

I estimate it, therefore, in May, 1831, at 10,083 39

The stable remained as it was at the time of Mr. Boott's memorandum, and cannot be set down for more than it actually produced many years later.

It is now easy to get at the aggregate outside value of all the property left in Mr. Boott's hands, except his interest in the foundry, at the date of the transaction under discussion.

72 Shares of Merrimack Manufacturing Company

at their then market price, (dividend included,))

as certified above, \$1160 00 per share, \$83,520 00

39 Shares of Boston Manufacturing Company,

\$700 per share, 27,300 00

Lilly's note, at what it eventually produced,

The stable, do. 1,500 00

Total, 122,403 39

Out of this property the estate was, first, to be relieved of its suretyship to Mr. Boott's wards. That debt, in 1831, after the partial payment to the ward then married, was still, as the probate accounts show, according to Mr. Tyler's statement from them, nearly \$39,000. Deducting that from the foregoing sum, it would leave, to cover all that Mr. Boott may have owed to the estate, only about \$83,000.* But the particular trust funds, formed by the account of 1818, afterwards broken up, and now to be replaced, supposing that were *all* he owed to the estate, were \$111,111 12. There

*122,000 00
39,000 00

83,000 00

would be a plain deficiency then, if all this property were so applied, upon the particular trust funds alone, of nearly \$28,000,* and even the \$100,000, required to be set apart for the support of Mrs. Boott, if all else were disregarded, could not be made good by about \$17,000.† This is not all. The foregoing statement supposes all this property *clear of incumbrance*. But, unfortunately, the greater part of it was pledged, for Mr. Boott's private loans from Messrs. Sturgis and Lowell, for \$51,000. Whether the stocks so pledged had been originally purchased with the funds of the estate or not, these gentlemen were supposed to know nothing of that. They took the stocks, standing in Mr. Boott's name, *as Mr. Boott's*; and, if they had no reason to think otherwise, they could not be deprived of their security. It was useless, then, to speculate, for the purpose of such a partial adjustment of affairs, as circumstances would permit to be made, upon the question, *how much* Mr. Boott might owe to his father's estate and had never accounted for; since, with the pledges he had made of the property in his hands, and after deducting the amount of debt to his wards, for which he had bound the estate, (his father having been a co-obligor in the guardianship bond,) even his mother's trust fund was deficient by almost \$70,000!‡

In short, the foundry, with its embarrassments, being rejected for the estate, even if he could have succeeded, by a sale of the foundry, in redeeming the stocks from his private pledges, all the property left would not suffice, by a considerable sum, to pay his wards, and make good the sum of \$100,000 for his mother.

*111,000 00		†100,000 00
83,000 00		83,000 00
<hr/>		<hr/>
28,000 00		17,000 00
‡ Property,		122,000 00
Debts for which it was pledged,		51,000 00
<hr/>		<hr/>
Nett,		71,000 00
Debt to the wards,		39,000 00
<hr/>		<hr/>
Balance towards Mrs. Boott's \$100,000,		32,000 00
Deficiency,		68,000 00

CHAPTER XXX.

THE AGREEMENT OF MAY, 1831. MR. LOWELL'S MISTAKE, WITH
A CIRCUMSTANCE.

The last chapter has disclosed the state of Mr. J. Wright Boott's affairs, at the time when the transaction occurred, about which Mr. Lowell and I now differ. What I determined to advise, and, if possible, to effect, under the request in Mr. Kirk Boott's letter, was, to have all the property above-mentioned, except the foundry, turned over as trust property, and ear-marked as such. To this Mr. J. Wright Boott, on my representations of the necessity, readily assented. Pledged or unpledged, redeemed in future or not, it was all so largely deficient for the required purpose, that there was nothing to discuss in the case.

What was done, in fact, appears as follows : Mr. Kirk Boott's letter, above cited, was received May 22. On the 23d and 24th of May, the transfer and retransfer, above-mentioned, by and to Mr. Lowell, were made and recorded, whereby the fifty shares of manufacturing stock held in pledge by him as the individual property of Mr. Boott, were marked as the property of Mr. Boott, *in his capacity of executor*. [See records of transfers, B. App. pp. 31. 33.] On the 28th of May, a similar arrangement having been effected with Mr. Sturgis, the forty-two shares held by that gentleman were, by a like transfer and retransfer, similarly marked. [See records as above.] On the 26th of May, Mr. Boott executed a deed, duly recorded, by which the stable was declared to be held by him *as executor*. [B. App. p. 24.] On the 23d of May, Lilly's note, and all the unpledged manufacturing stock, were conveyed to me in trust, first, to secure any balances that might be found due from Mr. Boott to his wards on the final settlement of his guardianship accounts; secondly, to hold

the residue, subject to his order *as executor*, for the purpose of discharging, so far as it might, the indebtedness to his father's estate, which the instrument *expressly declares*. [B. App. p. 23.] None of these facts are disputed by Mr. Lowell, though the last is one, which he takes care not to notice. The dispositions above-mentioned, it will be perceived, take up all the property described in Mr. Boott's memorandum, except the foundry and the store, which last had been lately sold.

The reader will now be prepared to understand the precise issue between Mr. Lowell and myself on this point, as it appears by the following extracts.

In my former pamphlet, after describing the transfer and retransfer by and to Mr. Lowell, I remarked :—

“The object of this arrangement was, to prevent the attachment of said shares, by any creditor of Mr. Wright Boott, for their value above the debt to Mr. Lowell. It was made in consequence of a conversation between Mr. Lowell and myself, in which we agreed that the shares pledged to him, although standing at the time in the *name* of Mr. Wright Boott, were, in reality, a part of the assets of his father's estate, and the above was the best expedient we could think of to remedy the mischief, so far as to secure them against any other creditor than Mr. Lowell himself.” [B. p. 43.]

Mr. Lowell's account of the same matter is somewhat more at large.

“I had had no personal dealings with Mr. Wright Boott, except that I had lent to him a few years before, a large sum of money from the trust funds in my hands, belonging to the estate of Jonathan Amory, on a pledge of manufacturing stocks. These stocks stood at the time of his making the loan, and had always stood, in his own individual name. In May, 1831, Mr. Brooks proposed to me that the *right of redemption* of these shares should be conveyed to Mr. Boott in his capacity of executor, subject to my debt; and he suggested, as the simplest mode of doing this, that I should convey *the shares* to Mr. Boott in that capacity, receiving simultaneously a reconveyance back. The legal effect of this he stated to be, to invest the equity of redemption in the estate, and nothing more.

I answered, that if Mr. Boott acceded to it, I should not object, provided it were understood that I was to reserve the amount of interest due to my trust out of the dividends, and that I did not waive my right to pay myself, whenever I should deem it necessary, by a sale of a portion of the stock.

It is obvious, that I could not be actuated in this arrangement by any motive, but that of doing a kindness to Mr. Brooks and the fam-

ily. I had perfect security in my hands ; but, on the other hand, I felt confident that I was dealing with men of honor, who would never turn to my disadvantage a measure adopted exclusively for their benefit and at their own urgent request.

Mr. Brooks is mistaken, when he says (page 43) that in our conversation in May, 1831, I agreed with him that the shares pledged to me, though standing in the name of Mr. Wright Boott, were in reality a part of the assets of his father's estate. *This is impossible ; for it was not until August, 1831, that is to say, three months later, that I was consulted about the affairs of Mr. Wright Boott.* I knew nothing about them, except from Mr. Brooks himself, and could not, of course, either affirm or deny any representation he might see fit to make on the subject.” [L. pp. 29–30.]

Again he remarks :—

“ It will be observed, that I had *no imaginable interest* in the settlement of the accounts, [in 1844] except that it should be done upon just and equitable principles. Mr. Boott owed a debt, it is true, to the estate of Jonathan Amory, of which I was the trustee ; but it was secured by a pledge of stock in which the estate of Kirk Boott, senior, had no interest, as I believed and *had been assured*, beyond a right of redemption. Even if the form in which I held those stocks was a wrong one, it was a form adopted at Mr. Brooks's own suggestion, for the benefit of the family ; and it had never occurred to me that Mr. Brooks would have availed himself of an act, done at his own instance, and for such a purpose, to my disadvantage. Nor do I now believe that he ever would have done so to my pecuniary disadvantage ; though he has not scrupled, in the excitement of controversy, to use it as an argument against me.” [L. pp. 35–36.]

When he undertakes to explain how the cash balance of \$25,000, claimed for the executor in the account of 1844, arose, he says :—

“ It was simply, because, in virtue of an agreement made with me by Mr. EDWARD BROOKS, in 1831, certain shares, which had stood in Mr. Boott's own name, and which I had every reason to suppose were his own individual property, and which, while so standing, had been pledged to me, four years before, for a loan, were, on the very day of the presentment of the account, retransferred by me to Mr. Boott as executor. The agreement with Mr. Brooks was based on the distinct recognition of my debt, as a *lien* on the stock, and was, virtually, that the estate should have the *equity of redemption* of those shares, subject to that debt. It was not, at that time, intimated by Mr. Brooks, that these shares, specifically, *belonged to the estate*, of Mr. Boott, senior ; but the object was, as Mr. Brooks has himself stated it, (p. 43) *to prevent their attachment by any creditor of Mr. Wright Boott, for their value above the debt due to me*, as trustee.

Mr. Brooks also, very fairly, says (p. 117) that undoubtedly I supposed these shares to be the property of Mr. Wright Boott at the time I made the loan on that security; it is therefore perfectly obvious, that all that he could have asked, or I could have consented to, was that I should, in some form, give to the estate the right of redemption of those shares. By reconveying them, on the day of Mr. Boott's presentation of the accounts, I, therefore, conveyed to the estate, more than it was entitled to receive, by precisely \$25,000, the amount of my debt." [L. pp. 41-42.]

He adds:—

"A part of the agreement between Mr. Brooks and myself was, that I should not be understood as waiving the right, whenever I saw fit, to pay myself by a sale of so much of the stock, as might be necessary for that purpose; a right I clearly had at common law, as holder of stock pledged as security for a note payable on demand." [L. p. 42.]

Now Mr. Lowell is right enough in the idea, that there was no intention, by this arrangement, to disturb his lien, or to alter his rights over the property; not that there was, to my recollection, or in my belief, *any express agreement about it*, on my part, as he states, for I had no authority to bind any one of the heirs except Mr. Kirk Boott, who had authorized me to act for him, and Mrs. Brooks, whom I represented by law. But, although there was no such express agreement on this point, as Mr. Lowell pretends, the *effect* of the transaction was supposed to be, to leave Mr. Lowell's lien, his right to receive the dividends, and his right of sale, just as they were before. So he understood at the time, no doubt, or he would not have consented to the arrangement; and so did I understand, supposing and believing, all the while, that Mr. Lowell, when he originally made the loan and received the shares in pledge, had no reason to suspect that they had been purchased with funds of the estate, or that they were not, in the eye of equity, the property of Mr. Boott.

Mr. Lowell is right, also, in his belief, that I should never have availed myself of *this act*, done at my request, for the benefit of others, with some interest of my own, to his pecuniary disadvantage; nor should I avail myself of it to his disadvantage in any way, unless it be a disadvantage to him that the truth should be made known, in reply to his state-

ments. Indeed, I do not well perceive how I *could* take any unfair advantage of it, were I so disposed. Mr. Lowell and Mr. Sturgis stood, so far as I then knew, just alike, in the transactions had with them respectively. It seemed to be, on the part of both of those gentlemen, an act of kindness and accommodation, to Mr. J. Wright Boott and his family, to allow the legal title of the shares to be thus shifted, without impairing, as was supposed, or intended, their own security. They might well have confided, that, under the influence of Messrs J. Wright Boott and Kirk Boott, and myself, every other heir would confirm a transaction, entered into by us for the benefit of the estate.

Perhaps there was no great occasion, however, to rely upon our influence. To be sure, a pledge by an executor, for his personal debt, of shares, which had just been conveyed to him in that official capacity, was, by itself, illegal. But, when all the circumstances, of which there were so many witnesses, should come to be explained, it may be doubted whether any heir would have been allowed to impeach the transaction on that ground, to the disadvantage of the *pledgee*, while he was claiming, at the same time, the benefit of the executor's title to the shares, which the transaction, as a whole, had created. The case might be different, if he could show some prior, or subsequent, conduct of the *pledgee*, which, when connected with this transaction, made it operate unfairly upon the heirs.

There is not, therefore, and never was, the least complaint, on my part, respecting the "*form*," in which Mr. Lowell held these stocks, nor respecting the *substantial fact*, so far as it depended on this agreement, as a thing by itself. Even "*in the excitement of controversy*," I do not claim, and never have claimed, to use *that* as an argument against him. But when *he* uses the *nominal balance of this account as proof of my error and misconduct in imputing mismanagement to Mr. Boott, and finds his argument for the reality of that balance on this transaction of May, 1831*, I claim to expose the actual facts, in answer to a very puerile piece of sophistry. And when he undertakes to say, that *he did not*

agree, in May, 1831, as the *basis* of that transaction, that the shares, previously pledged to him by Mr. Boott, though standing at the time in Mr. Boott's private name, were, in an equitable view, a part of the assets of his father's estate,—or when he says that the *legal effect* of the transaction was *stated by me*, as an *inducement* to his consent, to be, *to vest in the estate the equity of redemption* of those shares, and *nothing more*, and that he had been *assured* by me, that the estate *had no interest in the shares beyond that right of redemption*, —I claim the further privilege of showing, that these assertions are not made with that “usual accuracy,” for which Mr. Lowell has so distinguished himself in his “Reply.”

I have stated, that, shortly before this time, Mr. Lowell was brought into the counsel concerning Mr. J. Wright Boott's affairs, and that he knew, generally, the views and opinions of Mr. Kirk Boott and myself, and to all appearance concurred in them. He knew, generally, if not in the minutest detail, the actual position of all the property. How much more he knew, on some points, than I did, will appear as we proceed. He knew and concurred in the opinion, how undesirable and impossible it was, to permit the estate to touch the iron foundry, implicated as that was in the affairs of Lyman & Ralston, and the just claims of their creditors. He knew, that, after abandoning that, with the proceeds of the store, to Mr. Boott's separate account, all the remaining property was grossly inadequate to discharge the estate from its suretyship to the wards, and to preserve the unquestionable trust funds ; and he therefore knew, that these shares *could not*, under that arrangement, be considered otherwise than as representing, to their *full unpledged* value, funds of the estate. For its funds, *previous* to that arrangement, were *specifically invested* no where ; and if they did not lie in the store, (then sold,) nor in the foundry, they could exist only in the manufacturing stock and other items mentioned as virtual assets of the estate, which Mr. Boott was desirous, now, to acknowledge and *mark* as such.

Now what is the character of the transaction ? Mr. Boott, in effect, says, to Mr. Lowell, “These are the estate's shares.

I bought them, it is true, as my own, but with funds borrowed from the estate, which I am now unable to repay. In the mean time, I have, unhappily, considering them my own, pledged them to you for a private debt; and that debt, also, I am, at present, unable to repay out of any means of my own. I ought, in truth, never to have regarded these shares as my private property. They should have been marked for the estate from the beginning, since the moneys, which paid for them, were borrowed from the estate. But that cannot now be remedied. I shall pay my debt to you, from my own resources, if I am ever able. In the mean time, I cannot take the shares out of your hands, and by holding them, for some length of time, you may enable me, gradually, to wipe off the incumbrance. The best justice I can do, therefore, under the circumstances, is to request you, without yielding your own security, to acknowledge them, as I do, to be the estate's property, and for that purpose to transfer them to me, *as executor*, and to receive them back from me, as executor, in renewed pledge for your debt, leaving me to rectify the irregularity with the estate, hereafter, as well as I may."

This is the plain literal meaning of the transaction, and is that, to which Mr. Lowell, from its nature, must have assented when he made the transfer, whether any thing were *said* about it or not. It was the acknowledgement of *both parties*, pledgor and pledgee, that the shares, though suffered to remain pledged for Mr. Boott's individual debt, were really the property of the estate. One proof of it is, that, upon the retransfer, a *new note* was made, and *that note made by the executor and under that name*, as if the *debt itself* had been a debt of the *estate*; which Mr. Lowell does not pretend it to have been. This, formerly stated by me, [B. p. 43.] Mr. Lowell does not deny. Was this *debt* then, admitted by the executor, with my assent, to be, in form, a *debt of the estate*, and yet the *shares*, which covered it, *not admitted* by Mr. Lowell, to be in truth the *property* of the estate?

But Mr. Lowell says, that I proposed, that the *right of redemption*, only, of these shares should be *conveyed to Mr.*

Boott as executor, subject to his debt; and that I suggested, as the simplest mode of doing this, that he, Mr. Lowell, should convey the shares to Mr. Boott in that capacity, receiving simultaneously a reconveyance back. That would, certainly, have been a degree of simplicity, in both of us, of which, I think, we should hardly be suspected. If the whole object had been to vest in the estate the surplus value beyond the debt, and not the shares themselves, I should think the simplest mode of effecting it would have been the common arrangement of taking an acceptance, from Mr. Lowell, of an order from Mr. Boott, to pay over the surplus to him as executor, whenever the shares should be sold; or else a promise to convey the shares to the executor, whenever the executor, as such, should pay the debt out of other funds of the estate.

Again, Mr. Lowell says, that the shares being *Mr. Boott's*, the whole object was to prevent *Mr. Boott's creditors* from attaching them; and he has the assurance to quote me for it, referring to my pamphlet at p. 43. Mr. Lowell may make himself a party to such an agreement, if he will; but I pray him to excuse me. If the shares were admitted to be *Mr. Boott's*, really, as well as nominally, and this arrangement was only to cover them from attachment, what was it but a fraud on Mr. Boott's other creditors? And as to quoting me for that, I have already cited the language I used, by which the reader will see, that, when it states the object of the arrangement to have been to prevent an attachment, it also states this to have been because of a conversation with Mr. Lowell, in which we agreed, that the shares formerly pledged to him, "though standing, at the time, in the name of Mr. J. Wright Boott individually, were, in reality, a part of the assets of his father's estate;" and that this transaction "was the best expedient we could think of to remedy the mischief, so far as to secure them against any other creditor than Mr. Lowell himself." On that basis, considering the shares to be actual trust property, pledged for the private debt of the trustee, the transaction was perfectly right in itself, and fair towards general creditors, who

had no right to look for the payment of their debts out of trust funds held by Mr. Boott for the benefit of other persons. On Mr. Lowell's principle, the transaction would have been one, which creditors might have justly characterized by very harsh epithets.

I have endeavoured to show, that my explanation of the arrangement is no more than the transaction itself, under the known circumstances of the estate, did, of its own nature, imply. But, that it was, also, *expressly agreed* by Mr. Lowell, as the *basis* of our arrangement, that these shares did in equity belong to the estate, I now reiterate; and I regret to find his memory so "signally treacherous" on that point. He denies it, however, positively; but he, unfortunately, denies it with a circumstance. To that circumstance I now call attention. He says:—

"This is *impossible*; for it was not *until August, 1831*, that is to say, *three months later*, that I was *consulted* about the affairs of Mr. J. Wright Boott. *I knew nothing about them except from Mr. Brooks himself*, and could not, of course either affirm or deny any representation he might see fit to make on this subject." [L. p. 30.]

A part of this is repeated:—

"In the *summer* of 1831, a new alarm as to their responsibility occurred, and Mr. Kirk Boott applied to me to undertake the bringing about of some settlement, stating, that he and Mr. Brooks had tried their hand at it and failed. This was the *first knowledge* I had of the nature and extent of these embarrassments, though *rumors* had reached me of Lyman & Ralston's troubles, and I had entertained an *apprehension*, that Mr. Wright Boott *might* be involved in them." [L. p. 77.]

A similar statement is made at p. 28:—

"Our partnership [Boott & Lowell] was dissolved in 1824; and from that time I had *no knowledge* of Mr. Wright Boott's affairs, *until the month of August, 1831, when I was consulted* by my friend Mr. Kirk Boott, upon some embarrassments, that had grown out of the connection of his brother in the business of the Mill Dam Foundry with Messrs. Lyman & Ralston, whose bankruptcy was *then*, and had been for some time, apprehended."

This is a very strange instance of oversight. If the reader will turn to my last cited letter from Mr. Kirk Boot dated

May 22, 1831, and which was printed in the pamphlet, which Mr. Lowell pretends to answer, he will find it begins thus:—

“MY DEAR SIR,

Accompanying yours of yesterday I had one from J. A. L., [Mr. John A. Lowell,] urging me to come down.”

About what business? The letter goes on to say,

“I have no copy of my letter to Wright; it was penned in great pain, and under an *overwhelming impression* derived from a conversation with J. [Mr. P. T. Jackson] that *L. & R.’s failure was at hand.*”

It then speaks of an examination of their affairs, to which Mr. Jackson was a party, upon the occasion of an application for a certain discount, resulting in a report from him that they were not entitled to any credit. It advertises to Mr. J. Wright Boott’s resignation of the Suffolk agency, for which it is said, “no adequate motives could be openly assigned;” but the cause, it is thought, must have been suspected by Mr. William Appleton and others, and it is added, “*J. A. L. also, had observed to me that he did not think the sacrifice of J. W. B. would be of any service to L. & R.*”

Had not Mr. Lowell, then, in May, 1831, (the date of this letter,) already been consulted about Mr. Boott’s affairs? Will he say, that, so late as in August of that year, nothing but “*rumors*” had reached him of Lyman & Ralston’s troubles, and that he entertained only an “*apprehension* that Mr. Boott *might* be involved in them,” when he had been giving his opinion to Mr. Kirk Boott, before the 22d of May, that, permitting Mr. Wright Boott to fail, too, would not help the case of Lyman & Ralston, and when he had, after that, but still before the 22d of May, been writing to Mr. Kirk Boott, urging him to come to Boston with reference to those affairs?

But this is not all. Mr. Lowell himself finds occasion to use, in another connexion, and for a different purpose, a letter from Mr. P. T. Jackson to Mr. Kirk Boott, dated May 30,

1831, relating to Mr. J. Wright Boott's resignation of his agency. The letter is printed at large, [L. p. 102.] and the following sentences are extracts:—

"J. A. L. and I agree, that he cannot well confirm his resignation there, and immediately take another business; besides which we think now is the time, if ever, when he should settle every thing, and free himself from all engagements and responsibility on old concerns."

* * * * *

"If I don't see you, JOHN" [i. e. Mr. John A. Lowell] "will explain this more at large."

Had not Mr. Lowell, then, been made acquainted, in May, 1831, with the fact, that Mr. Boott had engagements and responsibilities on his "*old concerns*" to settle? What were these *old concerns*, referred to by Mr. Jackson? The engagements for Lyman & Ralston only? or the general family accounts? An *earlier* letter from Mr. Jackson, printed by Mr. Lowell, [L. p. 100.] answers that question. It is dated May 8, 1831, addressed to Mr. J. Wright Boott, and contains these words: "*Will you allow me to urge you to overcome this reluctance, and to proceed, immediately, to the settlement of your affairs, more particularly those of your own family?*"

But *this* is not all. Mr. Lowell prints at large, a note dated "*Wednesday morning,*" from Mr. Kirk Boott, "*to his brother, inclosing the foregoing letter from Mr. Jackson;*" [L. p. 103.] meaning the letter of May 30. The note begins thus:—

"My Dear Wright:

I should have conversed with you last evening on the subject of the enclosed, but was inclined to first sleep upon it."

This and the almanac fix its date at May 31, the day next after the date of Mr. Jackson's letter, which was May 30.

It contains these sentences:—

"J. A. L. offered and offers, to go on to Philadelphia for the purpose of arranging with the Ralstons as to your endorsements and the mortgage; and I believe he would find little difficulty in settling them." "This is due to you from J. A. L. He feels it to be so; and it will give him great satisfaction, if he can bring this affair to a successful termination."

These are more "contemporaneous expositions." It is plain, at p. 103 of the "Reply," that Mr. Lowell was mistaken at p. 77, when he said, Mr. Kirk Boott *applied to him* to undertake this agency; since Mr. Kirk Boott says, Mr. Lowell *made the offer*; and also, that he was mistaken at pp. 28, 30, when he says, it was *not till August*, 1831, that he was consulted about Mr. J. Wright Boott's affairs, since it appears from all these letters, that he was consulted about them, and conferred with Mr. Kirk Boott and with Mr. Jackson about them, in *May* 1831, and as early as the 8th of that month.

More than this: when Mr. Lowell introduces Mr. Jackson's letter of May 8, 1831, he speaks of Mr. Jackson as "*knowing all the facts* of these embarrassments on which Mr. Brooks has laid such stress." [L. p. 99.] Will Mr. Lowell pretend, that Mr. Jackson, at that date, knew *more* about them than *he* did? Mr. Jackson, in the letter of May 30th, referring to the necessity of settling up the old concerns, says, "JOHN [meaning Mr. John A. Lowell,] WILL EXPLAIN THIS MORE AT LARGE."

I have not, even yet, exhibited all the evidence, which Mr. Lowell furnishes against himself. He gives an account, as of his own personal knowledge, of the long negotiation, "which ended in Mr. Boott's joining in a mortgage of the foundery, to the amount of \$30,000." [L. p. 77.] Now the date of that mortgage is October 29, 1830, as its record in the Norfolk Registry of Deeds shows. Yet, says Mr. Lowell, "It was not *until August*, 1831, that I was consulted about the affairs of Mr. Wright Boott;" and, referring to the latter part of *May* of that year, he says, "*I knew nothing about them except from Mr. Brooks himself, and could not, of course, either affirm or deny any representation he might see fit to make on this subject.*" I think the reader will find, presently, that he knew a vast deal more about them than I did.

The *circumstance*, therefore, on which Mr. Lowell relies, in proof of the *impossibility* of his having agreed, on the 23d of May, 1831, as I affirm he did agree, namely, that the shares, which had been pledged to him by Mr. Boott, were in

reality a part of the estate of Mr. Boott, senior, turns out, upon his own showing, to be a most remarkable misrecollection. I leave it, then, to the reader to determine, which of us is most likely to misrecollect the *main fact*, appealing, for confirmation of my own memory, to the nature of the transaction on the face of the papers, connected with the admitted description and proved value of Mr. Boott's assets, placed by the side of the proved debts and the admitted amount of the trust fund then to be reconstructed and secured. To this I may fairly add the responsibility of the position, in which Mr. Kirk Boott's letter had placed me, when compelled to act, without him, for the common interest of the whole family on a great emergency. If my memory is good for any thing, upon any occasion, it could hardly fail to retain the remarkable particulars of an unusual transaction of such magnitude, managed by myself, and one, in which I had a much deeper interest at stake than if it had been a merely pecuniary interest of my own, though that, also, was not wanting. Mr. Lowell, since his lien was not to be disturbed, had, as he professes, no interest in the matter, except to oblige his friends.

C H A P T E R X X X I .

MR. LOWELL'S ARGUMENT, FROM THE AGREEMENT OF MAY, 1831,
ON THE REALITY OF THE CASH BALANCE CLAIMED FOR MR.
BOOTT.

Leaving the direct contradiction shown in the last chapter, between Mr. Lowell and myself, on a matter of fact, to be settled by the reader, let us now look to the argument.

Whether Mr. Lowell agreed, in terms, that these shares were part of the assets of the estate or not, if *Mr. Boott* assented to it, *his act*, in taking a transfer to himself *as exec-*

utor, made them so, *as against him*. This settles the question of the account. That is to say, these shares were then, with other property, turned over to the estate, by Mr. Boott, for the double purpose of securing the estate against the claim of his wards, and of replacing the trust fund, formed in 1818, but afterwards broken up ; and, if all the property so turned over, when cleared of Mr. Boott's private incumbrances upon it, was, at its then value, insufficient, as I have shown, for these purposes, it is certain that the transaction of May, 1831, did not leave Mr. Boott the owner, at *that* time, of a present interest of \$25,000, nor of a *single* dollar, in that property, subject to the incumbrances. If it were true then,—as the probate account, with Mr. Lowell's explanation of it, pretends,—that Mr. Boott had, in 1844, a private interest, mingled with the property of the estate, in the shares held by Mr. Lowell, it would be clear that this private interest must have been created by some cause, which Mr. Lowell is bound to show, *subsequent* to the transaction of 1831, and by *some cause other than a mere restoration of these shares to the executor*, in 1844, which Mr. Lowell insists is the true and sole cause.

To place this beyond all possibility of doubt, let me restate the case in figures. The whole property, that is, Lilly's note, the stable, and the manufacturing stock, valued, clear of incumbrance, has been shown to have been worth, when put in trust, in 1831, [Ante, p. 291,] only about \$122,000

But there were three special claims upon it :

1. That of the debt to Mr. Boott's wards, for which the whole estate of Mr. Boott the father was bound, then, according to Mr. Tyler, about	\$39,000
2. The debt to Mr. Lowell, for which fifty shares of the manufacturing stock were pledged, then	30,000
3. The debt to Mr. Sturgis, for which for- ty-two shares were pledged,	21,000

Leaving a clear surplus for the estate of only	90,000

	32,000

Now admitting, for the sake of the argument, that Mr. Boott was not bound, in 1831, to keep on hand the fund of \$11,000 for his aunts (in consequence of their deaths, which Mr. Lowell must assume to have happened,) and admitting that this sum had been duly distributed among the heirs, together with whatever else they had been entitled to from the estate, (which Mr. Lowell also assumes,) so that all the executor remained accountable for, on his trust, in 1844, was that, which Mr. Lowell admits, namely, the fund for his mother of \$100,000, how was it possible for Mr. Boott, with the means he possessed in 1831, to have got the \$100,000 fund, whole, out of that property, and to make \$25,000 of the property his own?

The *income* of the fund he was bound to apply to the purposes of the trust. He could not lawfully use that, any more than the principal, to pay his own debts with ; and Mr. Lowell indignantly repels the idea of his having done so. [L. p. 92.] This will presently be considered. Any *rise in value* of the stocks, after they had been conveyed to the estate, would be the gain of the estate, not Mr. Boott's. What this may at any time have amounted to I will presently consider, as well as the effect of charging the stocks to the trust *at their alleged cost*, instead of their *market value*, at the time of their conversion into trust property—a principle, which Mr. Lowell, with singular inconsistency, contends for, while he contends, in the same breath, that the shares held by him in pledge were not considered the estate's property, and that the estate acquired no interest in them, by the transaction of May, 1831, except their value in redemption beyond his debt.

How then, I repeat, were the \$90,000 of incumbrances to be paid off, out of a property of \$122,000, and \$25,000 to be left from it *belonging to Mr. Boott*, after *making good*, and *keeping good*, the entire trust fund of \$100,000? Or, since, after taking the incumbrances out of this property, there was a deficiency in Mrs. Boott's trust fund of near \$70,000, how was Mr. Boott, with this same property, and such other means

as he had, to make up that deficiency, and also to acquire, or reserve, \$25,000 for himself?

The only *other* property possessed by Mr. Boott, in May, 1831, it has been seen, was his interest in the foundry, subject to its debts, and the surplus remaining from the sale of the store, after the partial payment made out of it, to one of his wards. These were no great sums; not, both together, much exceeding \$16,000 of present assets.* They could go but a little way towards the payment of so large a debt. Unless, therefore, Mr. Lowell can show some *other resources* of Mr. Boott, either omitted in his memorandum of 1830, or subsequently acquired, and acquired otherwise than out of the trust property itself, and that these new resources, added to those above-mentioned, were adequate to the extinguishment of so large an amount of incumbrance, as it was needful to extinguish, before the \$100,000 fund could be extracted, whole, from the \$122,000 of property, which was transferred subject to the incumbrances; he cannot *begin* to establish, for Mr. Boott, a private interest of one dollar in that property. No such omissions, or subsequent acquisitions, are pretended; and, without them, all the figures and sophistry in the world cannot overcome the plain fact, which has now been made manifest.

But it is worth while briefly to look, in connexion with undisputed or indisputable facts, at Mr. Lowell's arguments on this point; and, to do him full justice, I shall report them in his own language.

Speaking of the account of 1844, (which, after stating the property held by the executor, adds the words, "less cash balance due to the executor, \$25,215 45,") "What," asks Mr. Lowell, "does *this cash balance* mean?" "It means

* The proceeds of the store were	\$16,000
The reduction of the guardianship debt in 1831, according to Mr. Tyler, was about	7,500
Surplus,	8,500
Cash proceeds of Mr. Boott's interest in the foundry, by the settlement with Lyman & Ralston, according to Mr. Lowell, about	7,600
	16,100

that he had *stocks, and other property standing in his name, as executor, MORE THAN BELONGED TO THE ESTATE, to that amount.*" [L. p. 41.]

The "stocks" here spoken of, it will be observed, are the same thirty-nine shares of Boston Manufacturing Company, and the same seventy-two shares of Merrimack Manufacturing Company, (less one, which had disappeared,) and the "other property" is the same stable, which received the executor's mark, and were put to the trust account, by the transactions of May, 1831. [See the account, L. p. 39.] These, the "Reply" says, were property standing in the *name* of the executor, *more than belonged to the estate*, by \$25,000.

"How came this to be the case?" asks Mr. Lowell, and he answers his own question thus:—

"It was simply because, *in virtue of an agreement made with me by Mr. Edward Brooks*, in 1831, certain shares, which *had stood in Mr. Boott's own name, and which I had every reason to suppose were his individual property*, and which, *while so standing*, had been pledged to me, *four years before*, for a loan, were, on the very day of the presentment of the account, *retransferred by me to Mr. Boott AS EXECUTOR.*" [L. p. 41]

The shares so retransferred, on that day, were seventy-one in number, namely, the fifty shares originally pledged by Mr. Boott, *as his own*, to Mr. Lowell, but which Mr. Boott receiving back, *as executor*, in May, 1831, had thereupon transferred, *as executor*, in renewed pledge to Mr. Lowell, and twenty-one of the forty-two shares, which Mr. Boott received and transferred in like manner, *as executor*, about the same time, in the arrangement with Mr. Sturgis, but which twenty-one shares Mr. Sturgis, afterwards, assigned to Mr. Lowell. Thus, holding seventy-one shares, on the day of the account, Mr. Lowell transferred them *all*, absolutely, to Mr. Boott, *as executor.* [See records of transfers.]

Mr. Lowell, it will be observed, in his foregoing statement, shuts out of sight the fact of *the transfer and retransfer to and by Mr. Boott, as executor*, in 1831. Leaving the case divested, in this immediate connexion, of that important fea-

ture, (though the fact is elsewhere admitted,) the "Reply" proceeds thus :—

"The agreement with Mr. Brooks was based on the distinct recognition of my debt as a *lien* on the stock, and was, *virtually*, that the estate should have the *equity of redemption* of those shares, *subject to that debt.*" [L. p. 41.]

"Mr. Brooks also very fairly says, [p. 117.] that, undoubtedly, I *supposed* these shares to be the property of Mr. Wright Boott at the time I made the *loan on that security.** It is, therefore, perfectly obvious, that all he could have asked, or I could have consented to, was that I should, in some form, *give to the estate the right of redemption* of those shares. By reconveying them, on the day of Mr. Boott's presentation of the accounts, I therefore conveyed to the estate more than it was entitled to receive, by precisely \$25,000, the amount of my debt." [L. p. 42.]

Now, on looking at the context, the reader will observe that this is an argument to prove that *Mr. Boott* had a right to charge against the property of the estate, as he does in this account of 1844, \$25,000, as a cash balance *due to him* from the estate, and that this is a *real* cash balance. That is, Mr. Lowell claims to identify himself with Mr. Boott. His argument comes to this: "I had a *lien* of \$25,000, on these shares, because Mr. Boott personally owed me that money, for which these shares were pledged. By my agreement with Mr. Brooks, in 1831, I gave the estate a right to redeem them from that debt. The estate, in 1844, had never exercised that right; but, on the day of the account, I nevertheless, conveyed the shares to the estate, clear of the debt. Therefore, the estate, having received, *from me*, more than it was entitled to, *from me*, by precisely \$25,000, it *owes* that money, *not to me, but to Mr. Boott*,—and not to him as my assignee, but as *executor of his father's estate*. His debt to me is the *estate's debt*. My claim on the property is his claim. *He and I are one.*"

* That, the reader will remember, was in 1827. I did not say that Mr. Lowell supposed them to be Mr. Boott's, in 1831. On the contrary, the passage referred to, of my former pamphlet, expressly declares, that Mr. Lowell "knew in 1831, that the shares pledged to him, as trustee, could not in equity be regarded as the property of Mr. Wright Boott." The reader will see, presently, what Mr. Lowell's means of knowledge were, at the time of the original loan, in 1827.

This absurdity seems to be the necessary consequence of Mr. Lowell's premises. The whole force of his argument, such as it is, lies in the naked *assertion*, that, by the transaction of 1831, the estate got *no title* to the *shares*, but got *a right to acquire one*, by paying \$25,000 for them; which may be perfectly true *as between the estate and Mr. Lowell*, but is perfectly untrue *as between the estate and Mr. Boott*. For the shares were *first transferred* to Mr. Boott *as executor*, in 1831, and were thereby made property, for which he, in that capacity, became accountable to the estate; they were *then transferred* by him, *as executor*, to Mr. Lowell, for the purpose of restoring to Mr. Lowell a lien, which, if it had not previously existed, the executor, acting in that capacity, would have had no right or power to create.

The intention plainly was, to make *Mr. Boott* accountable to the estate for the *shares*, and to make *Mr. Lowell* accountable to it only for their *surplus value* beyond his debt. And this was effectually done; for it seems, that Mr. Loring, when consulted, was of opinion, that, since the shares stood in Mr. Boott's name *as executor*, when they were last conveyed by him to Mr. Lowell, "it was proper and *necessary* that they should be introduced into the account." This was Mr. Loring's opinion, notwithstanding he supposed,—upon the misinformation of his clients as to the cause why the shares so stood,—that, to the extent of \$25,000, they were the private property of Mr. Boott; and, upon that hypothesis, depending on the *state of facts* in 1831, which the account did not show, and of which he had no personal knowledge, he is said to have advised that Mr. Boott should claim this difference of \$25,000 as a *balance due to him* from the estate. [L. p. 42.]

But the argument for this difference in Mr. Boott's favour, unfortunately, proves too much, as is apt to be the case with sophistical arguments. The debt to Mr. Lowell, at the time of the transaction of May, 1831, was not \$25,000, as the argument assumes, but \$30,000. That was the sum lent in 1827, [L. p. 87.] and the payment of \$5000, which reduced the debt to \$25,000, was not made, till November, 1831;

[B. App. p. 26.] that is, *six months after* the agreement with me in May of that year, which Mr. Lowell now says was the *cause* of Mr. Boott's having a private interest of \$25,000 in shares, held, nominally, as executor. If, then, by that transaction, the estate acquired, as against Mr. Boott, only the value of the shares beyond Mr. Boott's debt to Mr. Lowell, and a right to get a title and a further interest by paying that debt for him, (which is Mr. Lowell's argument,) why does not the account show a cash balance of \$30,000 due to Mr. Boott, instead of one for \$25,000? The *estate* certainly, never paid the \$5000, which reduced the debt;—it was paid by Mr. Boott, himself, from a source, which will presently appear.

Besides, whatever the bargain was, which I made with Mr. Lowell, I, afterwards, made a precisely similar bargain with Mr. Sturgis. The two transactions were, in principle, and in form, exactly alike. It follows, then, according to Mr. Lowell's argument, that the estate must have got, by that transaction, also, only an interest in the *surplus value* of forty-two shares of Merrimack stock *beyond* \$21,000 of debt due from Mr. Boott, for which they were then pledged to Mr. Sturgis. But the estate, according to Mr. Lowell, never paid a dollar of that money. So the account of 1844 tacitly affirms, since it contains no such charge; and Mr. Lowell positively declares that *he* paid that debt, for Mr. Boott. [L. p. 96.] How comes it then, that, in November, 1831, twenty-one of those shares were conveyed by Mr. Sturgis *to the executor*, as such, clear of all incumbrance, and that in November, 1844, the other twenty-one, which had in the mean time passed into Mr. Lowell's hands, were also transferred by Mr. Lowell (in addition to the fifty shares before mentioned,) *to the executor*, as such, clear of all incumbrance? And how is it that the executor, charging himself in his account, with the *whole* ninety-two shares, which he had received from Messrs. Lowell and Sturgis, as *property of the estate*, does not claim, for that cause, a cash balance of \$51,000, (the amount of the debts, for which they had been pledged,) as *due to him*, upon them, instead of one of \$25,000 only? How happens this, when,

in 1831, according to the "Reply," Mr. Boott had only transferred to the estate, what value there might be in the ninety-two shares beyond the \$51,000 of debt, for which they were then pledged; and when, according to the "Reply," he had afterwards paid \$26,000 of that debt, not out of the estate's money, but, as Mr. Lowell represents, out of his own pocket, [L. pp. 92, 97.] thus making the \$26,000 go to the benefit of the estate as a *pure gratuity*, and not because the shares themselves were, in 1831, declared and made to be the estate's property.

If it be said, the executor claims no more than \$25,000, instead of \$51,000, as his *due*, because the former sum is the *result of all the debits and credits* contained in the account, and makes an *exact balance*, that is only begging the question of the correctness of the account,—which is the very matter in issue. Mr. Lowell has undertaken to show that this alleged cash balance of \$25,000 must be correct,—not because it results from the other entries in the account, the truth and completeness of which are the very questions, but—*because of a particular agreement*, made with me in 1831, whereby the estate acquired an interest in certain shares held by him in pledge, subject to his lien upon them for that precise sum. The *reductio ad absurdum* is complete, when it is shown that the same reasoning would lead to an inevitable balance of \$51,000 due to the executor, notwithstanding that the figures in the account prove, incontestibly, if *they* are to be relied on, that this same balance is only \$25,000.

On the other hand, when we come to the plain matter of fact, if the entire property appropriated to the trust, in May, 1831, deducting the incumbrances upon it, was \$68,000 short of that, which, by Mr. Lowell's own admissions, it should have been, and if Mr. Boott had not then, nor ever afterwards, more than \$15,000, or \$20,000 at most, of his own property in hand, (which will presently appear,) let Mr. Lowell show, if he can, by any arithmetic, or any system of logic, within the compass of his ingenuity, how those incumbrances, to the

amount of \$90,000,* were paid off, without using the trust property itself, its income, gains, or rise in value, to do it with, so as to make, in 1844, an apparent property of \$100,000, or near it, for the trust, and \$25,000 for Mr. Boott himself. Until that can be shown, the alleged "cash balance due to the executor," must stand exposed as an unreal statement; and if it results, as it appears to result, from the cash debits and credits of the account, it only follows that something is not debited, which should be, or that something is credited, which should not be. In other words, the *indisputable facts*, of 1831, prove the *account*, of 1844, to be *essentially erroneous*. After showing that, the burden is not on me, surely, if I were under any burden in the outset, to explain the error, or to show in what wrong entry, or omission of entry, precisely, it consists. To some extent, however, I think, I shall show that.

CHAPTER XXXII.

MR. BOOTT'S RESIGNATION OF THE AGENCY OF THE SUFFOLK MANUFACTURING COMPANY. THE CHARGE AGAINST ME, OF MISREPRESENTATION, BY ITALICIZING, TURNED UPON MR. LOWELL.

Before quitting this momentous month of May, 1831, it may be proper for me to advert, more particularly, to the circumstances attending Mr. Boott's resignation, at that time, of the agency of the Suffolk Manufacturing Company, which he had previously agreed to accept.

Mr. Lowell, evidently, wishes his readers to suppose that I "either never knew, or had completely forgotten," *this occur-*

* Balance of guardianship debt,	\$39,000
Pledges to Messrs. Sturgis and Lowell, for	51,000
	<hr/>
	90,000

rence also, with its attendant circumstances, some of which he communicates as new information. [L. pp. 55, 100.] And it is true that these facts, like many others, which had but a remote bearing on the matters in dispute, were not mentioned in my former pamphlet. But he intimates a purposed misrepresentation, by me, of a passage in one of Mr. Kirk Boott's letters, alluding to this same event. These two suggestions, —ignorance of a fact, and intentional misrepresentation of it, —hardly stand well together; but there is as much truth in the one, as there is in the other.

It is strange from what slight premises Mr. Lowell, sometimes, ventures to draw hasty inferences, which he immediately builds upon as undoubted facts, justifying the gravest charges. Will the reader believe that his sole ground, for inferring and charging an intended misrepresentation of the passage, above referred to, in one of Mr. Kirk Boott's letters, is, that, like many other passages of those letters, upon which I desired, for one reason or another, to fix attention, it was printed, in my appendix, in Italic types?

He charges me, indeed, with a general "*practice of conveying a false impression by Italicizing certain words and passages.*" [L. p. 84.]

The reader will judge whether I am justly chargeable with that species of unfairness; and whether these Italicisms, which I often use, are employed by me for the purpose of *conveying a falsehood*, or simply to *mark*, more distinctly, that, which I desire to have marked.

The "Reply" points out two particular instances, only, in support of this charge; but, it is said, "These instances show the *spirit*, in which this book is written. It would be easy to follow out these *misrepresentations* step by step; but more important matters claim our attention." [L. p. 85.]

Now as to this *sweeping suggestion* of misrepresentations, *not specified*, because the accusing party can not condescend to the task of following them out, step by step, although, he says, "it would be easy" to do so, a charge in that vague form is, of course, easily made, and impossible to be answered otherwise than by an equally general denial. I must, of necessity,

leave it to answer itself. But, since two particular instances *are* specified as the great examples of my offence, the question must turn upon them, and the reader shall judge how far *they* bear out the allegation of unfair and deceitful practice.

The first of them is this: — I mentioned, in the course of my text, a fact within my own knowledge; namely, that, during the height of Mr. Boott's embarrassments, a resignation of his executorship was sometimes suggested. The trust deed of May 23, 1831, (drawn by myself,) provided, that I was to hold any surplus, left in my hands after the guardianship accounts should be settled, “subject to the order of said Boott in his said capacity as executor; and in case the said Boott should decease, *or resign his said trust as executor*, then to hold the said balance subject to the order of whomsoever may be appointed administrator on said estate in his stead.” [B. App. p. 23.] In speaking of this, I did not quote the words of the instrument; but stated their effect thus: — “In case of his death, or *resignation*, (then contemplated as a contingency not improbable,) the said surplus was to be held,” &c. [B. p. 42.]

The Italicizing of this word “*resignation*” is the matter complained of. That the event itself was then contemplated as not improbable, I stated of my own knowledge. By Italicizing, I simply invited the reader to notice the fact, that express provision for that contingency was made, in a contemporaneous paper. I did so, certainly, considering it confirmatory of my recollection; whether it is or not, the reader was left fairly to judge.

I thought I might, at least, be allowed to know, whether the contingent events, which I was making provision for, were, at this time, considered, by myself, who drew the instrument, likely or unlikely to happen. But Mr. Lowell thinks he has the faculty of knowing, even what is in the mind of another, better than the party himself; and his remark is, that “he, [Brooks,] might as well have Italicized the word ‘death,’ to show that he [Boott,] even then contemplated *suicide*.” [L. p. 85.]

The reader will assign to this misplaced witticism such value as he pleases. But does it tend to the establishing of any truth? Does the reader find any real analogy between the two cases, which Mr. Lowell thus ironically compares? Or, does he perceive the slightest *unfairness*, in my having thus drawn attention to the fact, that a *voluntary resignation*, no less than the necessary termination of an office by death, was one of the contingencies *expressly provided for*, in an instrument drawn at a time when I assert, independently of that evidence, that such an event was thought by no means improbable? Did the Italicizing *alter the sense* of the instrument to the smallest extent? Did it convey any species, or degree, of *false impression*?

In what does Mr. Lowell himself pretend to suppose the *falsehood* consists? He travels far to find it, and endeavours to make it out thus. It appears, by one of the letters of Mr. Kirk Boott above printed, [Ante, p. 276,] that Mr. J. Wright Boott, in Sept. 1830, wrote as follows:—"I do wish now that the property was taken out of my hands, to be appropriated as I first pointed out." Mr. Lowell refers to this single sentence, (not quoting its language correctly, by the way,) and says, "Mr. Brooks however, endeavours to create the impression that the *trust funds* were intended, by Italicizing the word 'resignation' in two very curious instances." [L. p. 84.]

That, which I have above cited, is one of them; and I shall presently cite the other.

The supposed falsehood, then, consists in this: that I have endeavoured to create the impression, that the property, above referred to by Mr. J. Wright Boott, was the *trust* property; whereas, Mr. Lowell insists that "the property spoken of is the *Foundery*." [L. p. 84.]

How does he arrive at that construction? The only reason given for it is, that "no action would be necessary to take that [the trust fund] out of his hands, if he wished to get rid of it;" but the foundry was a property "of which an assignment could not be made without the coöperation of Messrs. Lyman & Ralston." [L. p. 84.] .

This reason is insignificant enough. How could the trust funds, any more than the foundry, be taken out of the hands of Mr. Boott, without “action,” and the “coöperation” of somebody? Must there not be a new trustee to receive them? Must not the judge of probate accept a resignation, and make an appointment? Must not all parties interested in the trust have notice and be consulted? The very object of Mr. J. Wright Boott’s letter, from which these words are extracted, was, to obtain advice and assistance from his brother Kirk.

But there is another more important consideration. The reader has already seen, what Mr. Lowell finds it extremely convenient to overlook, namely, that, when Mr. Boott expressed that wish, in September, 1830, there was no such thing as a *specific trust fund* existing. Nothing was invested, visibly, *in trust*; but all the property, out of which a trust fund was afterwards constructed, by the arrangement of May, 1831, stood, in September, 1830,—just as Mr. Boott’s share of the foundry did,—in his individual name, as his private property. In that state of things, he expresses a wish that “*the property* was taken out of my hands, to be appropriated as I first pointed out;” and the question is, what property he meant.

Did he mean “*the foundery*,” particularly and exclusively, as Mr. Lowell assures his readers? Or did he, as I maintain, mean “*the property*,” *generally*, which he then held, and some indefinite part of which Mr. Lowell chooses to call “*the trust funds*? ” Did I endeavour to convey “*a false impression*,” when the latter was the impression, which I, certainly, did intend to convey?

Now I am quite willing to join issue here. The reader shall judge who makes the misrepresentation. I have shown, above, the only reason assigned for Mr. Lowell’s strained construction; and that, I submit to the reader, is no reason at all. Let us see if I cannot find a better reason for mine, in addition to the obvious one, that it best accords with the natural force of the words used. I propose to look to the *context*, which Mr. Lowell carefully avoids. What did

Mr. J. Wright Boott say in the same immediate connexion? What preceded and led to his remark respecting "the property?" The passage runs thus:—

"And besides, if the children [his wards] are paid in full, and this claim of theirs also, [a claim of Lyman & Ralston,] *the whole burthen will fall upon my poor mother*, who will have means so diminished, that her comfort and happiness will be destroyed, and *if her mind should dwell much on her situation you will see her health decline, perhaps destroyed.* I do wish now that *the property* was taken out of my hands, to be appropriated as I first pointed out." [Ante, p. 275-6.]

The appropriation of "the property" then, was to be with reference to "means" of "my poor mother." Now the foundry, it will be remembered, was the property, not of Mr. Boott alone, but of Messrs. Boott, Lyman and Ralston, subject, at this time, to the claims of creditors, to an amount, which rendered it of little or no value. Will Mr. Lowell, then, condescend to inform us, how the taking of *the foundry, only*, out of Mr. Boott's hands, and appropriating *his interest in that*, (for he could not appropriate that of his partners,) in any manner he may have pointed out, could be an object of such great desire, on account of *Mrs. Boott*? Mr. Lowell assures us, that Mr. Boott had, intentionally, used *no part of his father's estate* in that investment. [L. p. 87.] Why then, if the foundry was the *only* property at hazard, and he was thinking only of *that*, as a thing to be in some way disposed of, why did he apprehend that his *poor mother's* means would be so *diminished* as to destroy her comfort and happiness, and cause her, perhaps, to sink under the blow?

What had the foundry, on Mr. Lowell's theory, to do with *Mrs. Boott*? And when, in express and direct reference to *her* trust fund and *her* means, Mr. J. Wright Boott wishes that "*the property*" were in other hands, to be appropriated as he had pointed out, what property can he possibly intend, but that, on which his mother was dependent? And what was the property, on which she was, at that time, dependent? According to *my* theory, it was *all* the property Mr. Boott held, subject to his other debts,—for none of it was distin-

guishable from the rest as her trust fund. But, at any rate, even according to *Mr. Lowell's* theory, it was not *the foundry*,—for in that, he assures us, no trust money had been intentionally put, and that Mrs. Boott's trust fund was complete without that investment. [L. p. 87.] Yet, for the sake of his argument, Mr. Lowell does not scruple to assert, that the foundry, *alone*, was here spoken of by Mr. Boott!

We have seen what goes before, let us see what follows the sentence in question. Mr. J. Wright Boott adds, “I am bound hand and foot, and can do nothing of myself.” Why does Mr. Boott say this? His idea was, plainly enough, (when we see what his real position was,) that the claims upon him were so many, and so large, in proportion to his means, and so conflicting, that he could do nothing, unless some arrangement of compromise could be made, whereby, either some of the claimants should yield a preference to others, or all consent to relinquish a portion of their claims upon an insufficient fund. That, which he feared, was, that not an iota would be yielded, except by certain members of his own family; that any yielding, by them, would be at the expense of the common family trust fund; and, consequently, that his mother's means would be more diminished than they would be by an equal distribution of all his assets among all his creditors, including his father's estate. For, says he, “if the children are paid *in full*, and this claim of theirs [Lyman & Ralston's] *also*, the *whole burthen* will fall upon my poor mother.” It must *all* come out of her \$100,000. His wish was that Lyman & Ralston might be induced to yield *their* claim, in order to save for his mother as much of that sum as possible, by giving her a preference; and, by way of an argument to be addressed to them, through their wives, as heirs of his father, he concludes thus:—“It is certainly for the interest of the *heirs*, that the fund left to my *mother* should be *made good*; it will come to them eventually.”

I believe no reader, who has attended to the evidence of Mr. J. Wright Boott's pecuniary position, and the position of the family property in his hands, at this period, will fail to perceive, from Mr. J. Wright Boott's own language alone,

that his meaning has now been truly expounded. But this is not all we have to go by. We get this language of Mr. J. Wright Boott, only as it is quoted by Mr. Kirk Boott, in his letter to me. Now how did Mr. Kirk Boott understand it? Does *he* say,—or does he leave room for any man of common intelligence, and common fairness of mind, to infer,—that the foundry, *only*, was the thing to be assigned? On the contrary,—bearing in mind the fact, which has been placed beyond dispute, and is not denied by Mr. Lowell, that there was *no* property then held by Mr. J. Wright Boott *as executor, or as trustee*, but that the shares, the store, the stable, Lilly's note, and an undivided portion of the foundry, were all, in point of legal title, equally his own,—the language of Mr. Kirk Boott, immediately following the citation from his brother's note, cannot admit of two constructions, on the point in question. It is:—

"I have written to him a few lines, to say that I will be in town on Saturday; but how to advise or assist him, is more than I can tell. But for L. & R.'s affairs, I have no doubt that an assignment of *all his property*, out of which F. B.'s heirs' claim should be *first* paid, and the residue divided among the *other creditors*, would be the most advisable course." [Ante, p. 276.]

And who, we may ask, by the way, were the "*other creditors*," if "*L. & R.'s affairs*" were out of the way? Mr. Kirk Boott does not leave *that* doubtful; for, in another letter, written a few days later, he says, "My own opinion is, that J. W. B. should at once assign *all* his property, first, to secure F. B.'s heirs, and next *the estate and heirs of my father*." Ante, p. 278.]

This, it will be observed, is very material for its bearing on a more comprehensive question than we are now discussing. But, to adhere to the precise point in present dispute, was it, as Mr. Lowell pretends, an assignment of *the foundry*, alone, that Mr. J. Wright Boott had been consulted about?—or was it, as Mr. Kirk Boott assumes, an assignment of "*all his property*"?

The reader now has, I believe, the materials for judgment before him. I ask him to judge, since *fairness* is in

question, *who makes the misrepresentation?*—I, who have represented that an assignment of *all* the property, held by Mr. Boott, was the thing under consideration?—or Mr. Lowell, who represents that no assignment was ever dreamed of *except* of the foundry? I, who show to the reader, connectedly, all that Mr. J. Wright Boott wrote, and all that Mr. Kirk Boott wrote, on that subject? or Mr. Lowell, who picks out *two lines*, and shows *them* to the reader, without their context, *as if they were all* that bore upon the question? Or, to draw the matter more closely to the very point, at which we started, who gives the “*false impression*”?—I, who, by Italicizing the word “*resignation*,” endeavour, as Mr. Lowell says, “to create the impression” that what he calls “*the trust funds*,” (meaning, I presume, the shares of manufacturing stock, then held by Mr. J. Wright Boott as his own, but afterwards put in trust,) were intended by him as *part* of “*the property*,” which he wished were out of his hands?—or Mr. Lowell, who endeavours to persuade his reader, that Mr. Boott intended nothing but the foundry? and who, to promote that false belief, specifies my emphasis on the word “*resignation*,” as an instance of “*misrepresentation*,” adapted to support his general charge of “*a practice of conveying a false impression by Italicizing certain words or passages*,” because its tendency was “*to create the impression*” that Mr. J. Wright Boott wished “*all the property*,” in which others were interested, out of his hands?

The other instance, specified, of supposed false Italicizing, is in the sentence, from Mr. Kirk Boott’s letter, alluding to the resignation of the Suffolk agency. It stood printed thus, in the appendix of my former pamphlet :—

“Now such an occurrence as this, in which R.’s statements alone were taken, *being immediately followed by J. W. B.’s resignation, for which no adequate motives could be openly assigned*, did not, in my mind, admit of a doubtful interpretation.” [B. App. p. 20.]

Mr. Lowell comments upon this, as if, like the former instance, the word “*resignation*” had been Italicized *singly and particularly*; and as if it had been so Italicized for the

purpose of inducing the reader to believe that a resignation of the *executorship* was the thing, here also, alluded to, instead of the resignation of the Suffolk agency; and the object of inducing that belief in the reader is supposed to have been to strengthen the *false* impression, as Mr. Lowell represents it, that an assignment of *all* Mr. J. Wright Boott's property was contemplated, instead of an assignment of the foundry alone. The misrepresentation on that point, I think, I have fixed on Mr. Lowell.

But whence does he infer that I *intended* to induce the reader to believe, that a resignation of the *executorship* was alluded to in this letter? From nothing but the fact that the word *resignation* is *one* of the words contained in the *two lines*, which, as above shown, were printed in Italics, in my appendix. Now, as before remarked, many sentences of Mr. Kirk Boott's letters, which I wished the reader to note as illustrating something, which had been said by me, were so printed, in that appendix, without comment, or reference to any particular part of my text. In the course of my text, I had, among other things, repeatedly mentioned the privacy, which the late Mr. Kirk Boott and myself judged it necessary to observe, concerning Mr. J. Wright Boott's true position,—a degree of privacy leading us even to take the responsibility of withholding that information from the other heirs, for reasons, which will presently be more apparent. One example reads thus:—"This state of affairs, confidentially known to Mr. Kirk Boott and myself, *as appears by his letters* in the appendix, was, of course, carefully kept, as far as possible, from the knowledge of others." [B. p. 40.] I also spoke of the "entire confidence and union of views," which had formerly subsisted between the late Mr. Kirk Boott and myself, concerning the family affairs under Mr. J. Wright Boott's administration. I spoke of them *as shown by Mr. Kirk Boott's letters*; and I expressed my belief, that, under the altered circumstances, which led to Mr. J. Wright Boott's resignation of his trust, in 1844, Mr. Kirk Boott, if living, would have deemed it necessary, as I did, and as Mr. William Boott did, that such a resignation should be made. In that connexion,

speaking of the letters, I incidentally remarked, “*They show, besides,* that even a resignation of the executorship, at a proper time, was an event he [Mr. Kirk Boott] looked forward to as long ago as 1831; and which, as I know, he thought very desirable.” [B. p. 94.]

In none of these remarks did I point to any particular passage of the letters; but I referred to the letters, generally, as to be found in an appendix; leaving the reader to make the particular application. It is obvious that the passage in Italics, particularized by Mr. Lowell, is, as it stands in the appendix, literally capable of being referred to *either* of the two sentences of my text, which are above extracted. Mr. Lowell chooses to refer it to the last, by fixing on a *single word*, instead of the *general idea* expressed by the *whole* Italicized passage, which is, that the *motive*, for *some* resignation by Mr. J. W. Boott, there alluded to, could not be *openly* assigned. In that way, only, does he make out the supposed intentional misrepresentation. This seems far-fetched enough. The supposed intention of falsehood rests, entirely, on his own misapplication of my reference. That, which I had in my own mind, when I spoke of the letters as indicating that Mr. Kirk Boott looked to a surrender of the trust as a desirable thing, at a proper time and under proper circumstances, was,—not the particular passage, which Mr. Lowell selects for it, but—the idea, repeatedly thrown out and enforced in different passages of those letters, that there ought to be an assignment of all the property, “first, to secure F. B.’s heirs, and next, the estate and heirs of my father;” [Ante, p. 278.] which plainly implied the appointment of a new trustee for the estate, and would, of course, involve a resignation by Mr. J. Wright Boott.

I have already pointed out the false gloss, which Mr. Lowell endeavours to put on these letters of Mr. Kirk Boott. [Ante, pp. 215, 274.] He does it, in the present instance, by selecting for his commentary an isolated sentence, quoted by Mr. Kirk Boott from his brother’s note to him, and by misinterpreting that sentence, without giving his readers the means of perceiving, by the context, that there is a misin-

terpretation. A particular construction of that passage in Mr. J. Wright Boott's note is the point, which Mr. Lowell supposes me to have remotely aimed at, by Italicizing the word *resignation* in each of the "two very curious instances," which he selects for his animadversion. If I have succeeded in satisfying the reader that the language of Mr. J. Wright Boott is not *misinterpreted* by me, and that it is by Mr. Lowell, I must, of course, stand acquitted of any *intention* to mislead, or *object in misleading*, upon the subordinate question, *what resignation* Mr. Kirk Boott alluded to in the sentence now under consideration, which is the second instance of false Italicizing specified.

If, therefore, any body has been in fact misled on this latter point, as Mr. Lowell affects to believe, it has happened through an inadvertence, at most, and not by design. Even this I should regret, exceedingly, notwithstanding that the general idea, which, according to Mr. Lowell, the Italicizing was intended to convey, is in perfect accordance with the truth, and that the question, what *resignation* Mr. Kirk Boott was speaking of, is, of itself, quite immaterial. I, certainly, cannot claim to have misunderstood, myself, the allusion to the agency of the Suffolk Manufacturing Co. Indeed, it is referred to, *by name*, in the *same letter*; for Mr. Kirk Boott says, "I do not, under all circumstances, think it very important that J. W. B. *should* take the agency of the Suffolk Co." [Ante, p. 280.] But an ambiguity has now been pointed out by Mr. Lowell, arising from the want of distinct references in the appendix of my former pamphlet; and I was, perhaps, faulty in not having explained this passage to the reader. The acceptance, and the subsequent *resignation*, of that agency, were among the facts, of which I had made a memorandum, with a view to the preparation of my former statement; but I, finally, omitted to mention them, in that statement, because I found they would lead to remarks somewhat more extended than their significance, then, seemed to justify. The use made of them by Mr. Lowell, in connexion with certain letters printed by him, gives them a new importance; and after this digression, concerning my

supposed practice of misrepresenting, by using a particular form of type, I shall, now, return to the matter, which led to it, and consider the true bearing of certain letters, which are published by Mr. Lowell.

CHAPTER XXXIII.

MR. JACKSON'S LETTER OF MAY 8, 1831.

The letters mentioned in the last chapter, as published by Mr. Lowell, are from the late Mr. P. T. Jackson, and the late Mr. Kirk Boott. They relate to Mr. J. Wright Boott's resignation of the agency of the Suffolk Manufacturing Company, and to a proposal, soon after, for the employment of that gentleman upon a mission to England, for the purchase of railroad iron.

It is hardly necessary for me to say, that no man, not a near relative, has a higher respect, or warmer regard, for the memory of the late Patrick T. Jackson, and for that of the late Kirk Boott, of Lowell, than I have. These distinguished names, as I may justly call them, carrying, as they deserve, no small influence in this community, Mr. Lowell has seen fit to invoke to his aid, for supposed opinions, totally inconsistent, as he represents, with my former statements concerning Mr. J. Wright Boott's conduct, and concerning Mr. Kirk Boott's sentiments. He hopes, apparently, to overwhelm, in public opinion, so inconsiderable a person as I am, with the weight of "the highest authority," [L. p. 101.] added to his own, and at the same time to effect, for himself, an escape from the pressure of facts and evidence, which he could not otherwise answer. But he entirely mistook his man, if he supposed that I should succumb to any falsehood, promulgated under a parade of great names to give it

countenance ; and I flatter myself that he has mistaken, also, the understanding of his readers, when they shall see the evidence arrayed, and perceive, as they will, after the facts are before them, that there is no such inconsistency, between the cited opinions and my statements, as a first imperfect vision, through Mr. Lowell's atmosphere, may have led them to imagine.

Under the general proposition, "that Mr. Boott was, in substance, whatever he might be, in form, a remarkably good manager of trust property," [L. p. 97.] Mr. Lowell introduces, first, Mr. Boott's account with his ward, which I have already commented on, [Ante, Ch. 16.] and then says, "I shall now cite the testimony of a person, whose competency to judge Mr. Brooks will hardly dispute, and who, *knowing all the facts* of those embarrassments, on which Mr. Brooks has laid such stress, expressed, concerning Mr. Boott, the opinions I shall quote." [L. p. 99.] This is the prelude to Mr. Jackson's letter of May 8, 1831.

I am obliged to Mr. Lowell for producing that letter. It is not only a "contemporaneous exposition," valuable in itself, but it brings up another "reminiscence." The letter was written at my own suggestion, upon consultation with Mr. Kirk Boott, after conferences with Mr. Jackson and Mr. Lowell.

To show how this arose, I must explain the circumstances. I have already stated that Mr. Kirk Boott and myself knew that Mr. J. Wright Boott must be largely indebted to his father's estate ; how largely we did not know. I, at least, had no means of forming an opinion, except such as I have before mentioned. I knew, besides, from Mr. Kirk Boott, that he had been called upon by his brother, several years before, to refund a large sum on account of losses formerly sustained by the mercantile house, in which they had once been partners ; and that the occasion of the call was, as Mr. Kirk Boott understood, a settlement proposed to be made by Mr. J. Wright Boott, as executor, with the other heirs of his father's estate. The evidence of this I formerly exhibited, and shall presently advert to

again. No such settlement, however, was in fact made by the executor, although the partnership account was adjusted between him and Mr. Kirk Boott. I had no doubt,—and I think I derived that impression, also, from Mr. Kirk Boott,—that other refunding was due from some other heirs, if distributions of the estate among all the heirs were to be equalized. In confirmation of this idea, I may add, that Mr. Lowell has repeatedly declared, (though he takes no notice of it now,) that one reason, why Mr. J. Wright Boott had delayed a settlement of the accounts of the estate, was, that he could not have settled them without making his brothers bankrupt.

However this may have been, a subject frequently conversed about, between Mr. Kirk Boott and myself, and in which we concurred, was the great importance of getting from Mr. J. Wright Boott a statement and settlement of his family accounts. Until the disclosure of 1830, I never supposed he would find the least difficulty, in settling them, from a want of sufficient pecuniary means to pay to every heir the full amount that might be due. But, after that disclosure, it had become apparent, that any settlement of the executor's accounts must result in a balance of large indebtedness by Mr. J. Wright Boott to the estate, or to some of its heirs, beyond his ability to pay.

There never was, perhaps, a family, composed of so many individuals, less actuated than this family, (I do not, of course, speak of myself,) by mere selfish considerations of pecuniary interests. The fault, if there were any, in money matters, was rather in too little, than too much, regard for them. This was especially true of Mr. J. Wright Boott; and perhaps, might be justly said of all. If Mr. J. Wright Boott and the other members of the family had been but ordinarily attentive to proper settlements, the duty of which devolved, in an especial manner, upon him, probably no great loss of property would ever have happened ;—certainly not the miserable confusion and doubtfulness, respecting the true state of the family affairs, which arose. But it was evident in 1830–1, that a great mischief had already happened, and that

it could not be helped. There was but so much property remaining, in Mr. J. Wright Boott's hands, to meet all the calls upon it; and the only thing to be done was to make the best of that, and to save, what could then be saved, from the wreck. As to reclamations for the past, by one heir upon another, or by any of them upon the executor, there was a perfect willingness, all round, so far as I know or believe, (that is, there was, I know, on the part of those, who were acquainted with the true posture of affairs, and I have no doubt there would have been on the part of every other heir, when informed of it,) to settle upon the basis of the "*uti possidetis*," (as Mr. Lowell has it,) leaving every one to keep what he had formerly got under the belief that he was well entitled to it, and securing only what remained in the hands of Mr. J. Wright Boott, for the benefit of Mrs. Boott during her life, and the advantage of the heirs afterwards.

The probability is, that, if we had ever come, through Mr. J. Wright Boott, to a general family settlement, every one, who had received more than an equal share,—estimating that, which had been distributed, together with that, which Mr. Boott still possessed, after providing for indispensable debts out of the family,—instead of waiting to be urged, would have been forward to insist, on restoring his excess, to the best of his ability. There would have been, in my belief, a contest of liberality, and not of extortion. At least, without affecting any "*lofty indifference*," as Mr. Lowell says I do, "*to pecuniary considerations*," [L. p. 105.] I may say, for myself, that I was disposed to do full justice, to say no more, when I saw the actual condition of the estate; and knowing that Mrs. Brooks had received, in the furnishing of our house, a sum, which did not appear to have been allowed to some, or to one, at least, of the other heirs, who seemed equally entitled to it, I was apprehensive that it might be proper for me to refund something, and in that case I was anxious to do so, if I could only find out how others stood, so as to know what was the proper thing to be done.

With respect to Mr. J. Wright Boott's indebtedness to the estate, whether more or less, such was the kindness and gen-

erosity towards him, in the family, that there would have been not a moment's hesitation in relieving him from any claim of the heirs for the past, if the property left from the ruin could be preserved. This is not mere speculation; the release, afterwards given, in 1833, proves it. But the difficulty was to get at the accounts, and to know how matters really stood.

With few exceptions, no heir knew what any other had received; and, without any exception, no heir knew, but Mr. J. Wright Boott,—and I doubt whether he did himself, from the manner, in which the business appears to have been managed,—what the whole estate had amounted to, or how much he was justly accountable for. Yet the family, generally, had the utmost confidence that every thing in his hands would, eventually, turn out right; and I believe none of them, except Mr. Kirk Boott and myself, had any idea, in 1831, how small a property was remaining in the executor's hands, or to what extent it was encumbered by his private engagements. My statement, above, respecting the desirableness of an exhibition of the accounts in my opinion, and in that of Mr. Kirk Boott, is confirmed by his letter to me, above quoted,—written seven or eight months before this month of May, 1831,—which begins, “If such a statement as you have recommended can be made up, which I fear J. W. will find almost impossible, it certainly would greatly facilitate the settlement. The truth may be approximated, if not correctly ascertained.” [Ante, p. 275.] Without pretending to recollect the terms, or the precise tenor, of the particular recommendation here referred to, I think it probable that its substance was, the making of such a statement as would show the sums, which Lyman & Ralston were then entitled to receive from Mr. J. Wright Boott, as executor. This would involve, of course, all his accounts with the estate.

What I have said as to the ignorance of any one heir, attended with some natural curiosity, respecting the receipts of others, may be illustrated by the following passage from a letter of Mr. Ralston to me, dated, “Philadelphia, Nov. 19,

1830," referring to certain stocks, held by some of the heirs, who had received them through Mr. J. Wright Boott:—

EXTRACT FROM A LETTER OF MR. ROBERT RALSTON, JR.

"You may remember a list of the Stockholders of certain Companies, which I once showed to you. Upon looking over my papers, I have found it. I find that our friend W. W. [Mr. Wm. Wells] has standing in his name six Merrimacks, three Walthams, and six Locks and Canals,—Jas. B. [Mr. James Boott] five Merrimacks and five Walthams. You were under the impression, I believe, that the former had none of the Locks and Canals. The dates of the list are, for the Mc. [Merrimack] Dec. 1827; B. M. C. [Boston Manufacturing Company] April, 1828; L. and C. [Locks and Canals] Oct. 1827. The list I shall bring on with me."

Mr. Kirk Boott and myself, with the knowledge we had, in May, 1831, from the disclosure made to us by Mr. J. Wright Boott in 1830, could not but perceive that there had been most unfortunate management, and that the strict duties of a trustee had been quite disregarded. But we considered that Mr. J. Wright Boott had been placed in a very difficult position, as sole surviving partner of his father, sole executor of his will, sole trustee under it, sole guardian of the minor children, and leading partner of the new house formed by the sons; that he had entered into engagements, which had proved losing ones, confident of success, and with the desire and expectation of helping others of the family, more than himself; that his use of the family funds, in speculation and trade, though improper, had been intended for the common benefit, and not for his own separate advantage; that he had been drawn in, by degrees, deeper than he had contemplated; that great embarrassment and loss had consequently happened to the funds of the estate; that this evil had resulted, very much, from his own mistaken notions and peculiar views of his rights and authority over the family property, which led him to look upon himself as standing in his father's place, with full power to dispose of it as he thought best for the common good, just as if the property had been his own;—and that these peculiarities had been fostered and enlarged by the manner, in

which all the members of the family had deferentially submitted to his management from the beginning, without account or question;—and, fully appreciating many admirable traits of character, for which I have heretofore given him credit, we believed that there was nothing in the case, under all its circumstances, so far as known to us, which touched his integrity, or which ought to impair the general good opinion, in which he was held. Yet, we could not but be sensible, that, a knowledge, among strangers, of any deficiency in his trust accounts, without a knowledge of all the circumstances, which had led to it, must tend to injure him in general estimation. His own overwhelming sense of his misfortune, apprehension of its publicity, and sensitiveness upon such subjects, are illustrated in his language, quoted by Mr. Kirk Boott. [Ante, pp. 275—6.] These feelings made it impossible for his own brother,—still more for me, while that brother was holding back,—to go to him, under such circumstances, and peremptorily to insist that his accounts should be stated and settled, though we never doubted that a statement of them would end in his discharge, by the heirs, from all liability beyond the property he then held.

In respect to his entanglement with Lyman & Ralston, so far as a settlement between the parties themselves was concerned, it appeared to us that its most serious impediment was the want of the family accounts,—Messrs. Lyman and Ralston believing, not unreasonably, that large sums were due to them, respectively, as heirs, beyond what they had received, and which ought to be included in the partnership settlement, as an offset to Mr. J. Wright Boott's alleged over-advances to the foundry. And if they, (Messrs. Boott, Lyman and Ralston,) could only be brought to an agreement, among themselves, as to proper terms, on which Mr. Boott might be permitted to retire from the obligations of the partnership, we had strong hopes that the desire and ability of Mr. Ralston's family and friends to sustain *him*, would lead to some arrangement for the satisfaction of the joint creditors, so as to prevent their coming upon Mr. Boott, and to leave the property, exclusive of the foundry, to be applied,

first, to the payment of his wards, and then to secure the trust funds, and the heirs, of his father's estate, so far as the means would allow. But the very first step seemed to be to get Mr. J. Wright Boott to investigate and state, as well as he could, his family accounts;—and this included his accounts as guardian to the children of Mr. F. Boott, the estate being bound for the deficiency there, estimated roundly at \$20,000, but of which the exact truth was quite unknown to us, for want of the accounts. It now appears that the debt was much larger than we then supposed. In the mean time, regard to Mr. J. Wright Boott's reputation and credit imposed on us, of course, the utmost caution, in keeping what we knew to ourselves, except when some useful object was to be gained by a confidential communication.

So much for the position and views of Mr. Kirk Boott and myself.

In regard to Mr. Lowell, he stood peculiarly. He had been an apprentice, or clerk, in the counting-room of Kirk Boott & Sons, and afterwards a partner, in the same business, with Mr. J. Wright Boott, under the firm of Boott & Lowell. He was considerably acquainted, from these circumstances, with the family affairs. He was looked upon as the most confidential friend of Mr. J. Wright Boott, out of the family, and was supposed to be a common friend to all of us. He was, besides, Mr. J. Wright Boott's largest creditor; and, being himself amply secured, it was thought he might render efficient aid, in bringing affairs to a settlement with others. He was therefore, pretty early, taken into our counsel.

Mr. Jackson was not only intimate with Mr. Kirk Boott and with Mr. Lowell, and on the most friendly terms with myself, but he had been associated with Mr. J. Wright Boott, as well as with Mr. Kirk Boott, in the Chelmsford speculation, the origin of the city of Lowell. He had the highest opinion of Mr. Kirk Boott, whom he and Mr. Nathan Appleton had early selected for the agency of that important concern. The wisdom of their choice had been proved by the event. For that reason, perhaps, Mr. Jackson may have been the more inclined to select Mr. J. Wright Boott, also,

for an agency at Lowell, having formed, no doubt, a favourable opinion of his general character, intelligence, and capacity. At any rate, Mr. Jackson had interested himself, warmly, in causing the selection of Mr. J. Wright Boott for the agency of the Suffolk Manufacturing Company.

This appointment, and Mr. J. Wright Boott's acceptance of it, were subjects of great gratification to all the members of the family; particularly to those of us, who knew most of his embarrassments, and just in proportion to our knowledge of them. It seemed to open a way, for him, to get out of a bad business into a good one, as Mr. Kirk Boott had done before him, with great success. Such a new career, once entered upon, it was hoped might, gradually, lead to the retrievalment of the family affairs in his hands, and of his own. Even Mr. Ralston, though still an unbeliever in the fact that the business of the foundry was a bad one, appears to have seen that some advantage would be derived from Mr. J. Wright Boott's removal to this new sphere. I refer, for this, to a letter from Mr. Ralston to me, dated at Philadelphia, in Nov. 1830. He had been informed, it seems, that this agency would be offered to Mr. J. Wright Boott, but that he would probably refuse it. In reference to that he writes:—"I hope, sincerely, that such may not be the result, as I should hope for better things if he were to accept the agency."

But although he did agree to accept it, in January, 1831, still, before entering upon the duties of the office, it was indispensable that he should close his engagements with Lyman & Ralston, and get rid of his responsibilities to the joint creditors. If that were done, it was thought that his liabilities to his wards, and to the members of his own family, and to his only other creditors, Messrs. Sturgis and Lowell, might be quietly arranged, among ourselves, so as to make the best of the remaining means, and leave to time and prudence, such restoration of that, which had been lost, as future success might permit. But all this, as before remarked, required a statement and adjustment of accounts; and how to approach Mr. J. Wright Boott on that subject, without

wounding his feelings, and, indeed, without giving mortal offence to his peculiar temper, was the problem. The peculiarity I speak of, and the reserve it created, is well illustrated by a letter from Mr. Kirk Boott to me, of a little later date, (May 10, 1833,) in which he says, “I have some misgivings, that, if I meddle at all, I may do more harm than good.” “If I can put into shape what I feel, *so as to incur little risk of giving offence*, I think I shall write to J. W. B.; but I am very sensible how ticklish an affair this is.” [B. App. p. 29.]

Mr. Jackson, upon tendering to Mr. J. Wright Boott the office of the Suffolk agency, became partially informed of the difficulties under which he laboured. Mr. Lowell affects to believe, that, upon that occasion Mr. J. Wright Boott must have gone into a *full disclosure* of the extent of his embarrassments and of all his family affairs;—such a disclosure, at least, as, in Mr. Lowell’s opinion, rendered Mr. Jackson a *competent judge* upon the question, whether, or not, he was “a remarkably good manager of trust property,”—the point to which he pretends to cite that gentleman. [L. p. 97–99. 101.] This is very unlikely. The occasion did not call for it. A general declaration that he had been unfortunate, and had lost his property, and was under embarrassments and responsibilities, which he could not immediately get rid of, was all that the highest honour demanded in answer to such an invitation. It was not necessary to declare himself “a defaulter,” (to use the strong expression of Mr. Lowell,) if he were so; and as to his having disclosed to Mr. Jackson the true state of his accounts with his father’s estate, and the whole position of the family property, if he did that, it is more than he ever disclosed to those, who were concerned to know these matters, and the reader may judge of its likelihood. Indeed, it is scarcely possible that he should have made to Mr. Jackson a disclosure of his inability to make good the actual trust funds. I should certainly have heard of that, at the time, from Mr. Jackson, since I had repeated conversations with that gentleman on the subject of Mr.

Boott's acceptance of this agency, and the reasons he had assigned for doubting whether he should accept it.

Mr. Jackson, it may be presumed, got such information, only, from Mr. J. Wright Boott, as the object of the visit, in Mr. Boott's opinion, entitled him to receive; and he afterwards had, from Mr. Kirk Boott and myself, and, I may add, from Mr. Lowell, such further partial information as we thought proper for us to give, and no more. He never, to my knowledge, or in my belief, had the least idea of the very low and precarious condition, to which the family property was at that time reduced. Circumstances, however, now detailed, had established, after the appointment to the Suffolk agency, a certain degree of confidence between Mr. Jackson and myself and Mr. Kirk Boott, as well as Mr. Lowell, concerning Mr. J. Wright Boott's affairs; and Mr. Jackson was informed, among other things, that the real difficulty was to get Mr. J. Wright Boott to settle up long standing family accounts, which, with the desire of the family to aid him, might easily be done, if he would only set himself earnestly about it.

Upon a suggestion first coming from me, it was agreed, between Mr. Kirk Boott and myself, that this was an opportunity not to be lost; that Mr. Jackson was, of all men, the fittest, after what had passed between him and Mr. J. Wright Boott, to bring about a statement of the *executor's accounts*, and that *he* could do it, without officiousness and without offence, when nobody else could, upon the occasion of arranging with Mr. J. Wright Boott for a treasurer's bond, which his agency required. We, accordingly, at a subsequent conference, urged our views upon Mr. Jackson, who approved them, and to oblige us, as well as to render a real service to Mr. J. Wright Boott, readily undertook a somewhat disagreeable task. He discharged it, with a delicacy, kindness, and directness, quite characteristic of him, by the following letter, which I now reprint from the "Reply." [L. p. 100.]

LETTER FROM MR. P. T. JACKSON.

“WALTHAM, 8th May, 1831.

MY DEAR SIR,

The confidence and candor with which you explained to me your situation, when we conversed on the subject of your taking charge of the business of the Suffolk Manufacturing Company, leads me to hope you will not be displeased, if I take the liberty of giving my opinion as to the course *necessary for you to pursue*.

The time has arrived when you should give bond as treasurer, and enter upon the duties of your office. That this has not been done, I believe arises from a reluctance on your part to settle up your accounts, which I suppose *must* be done, before you can give the necessary bond; if I am right in my *conjecture* as to the cause of the delay, will you allow me to urge you to overcome this reluctance, and to proceed immediately to the settlement of your affairs, *more particularly those of your own family*, so as to commence your new business with that energy, which I know you will exert as soon as you have freed yourself from the weight which now oppresses you.

When I engaged your services for the Suffolk Company, I felt assured that I had rendered them a service in obtaining a man well qualified to manage their affairs. The frank and candid manner, in which you explained your situation to me, produced no other alteration in my mind, than as it confirmed the opinion I had previously entertained of your perfect uprightness and integrity, and made me, if possible, better satisfied with my selection.

That you were poorer than I had supposed, I regretted for your sake; but I did not think this disqualified you for the office; nor do I now think so. *If, however, you are under any engagements or embarrassments, which you cannot get rid of, and which will occupy your time and thoughts, this may be a reason why you should decline taking charge of business for others.* From *your statements*, I feel certain, that, with some exertion, *you can free yourself* from what now appears to you a heavy burden, to be borne for ever.

If you think my remarks are too free, believe that I have made them from a sincere desire to serve you, and that I am very truly, and with much esteem and regard,

Your friend,

P. T. JACKSON.

J. W. BOOTT, Esq.”

It is much to be regretted that this letter had not appeared in Mr. Jackson's life-time. It would have been, at least, more agreeable to me, to have had his confirmation of the circumstances, in which it originated. But it is only necessary to read the letter itself, to see that *something* must have led to the writing of it, *as it is written*, besides the mere

calling for a treasurer's bond. That call required nothing more than a polite and friendly note, explaining its necessity. The letter goes far beyond this; and I invite the reader's attention especially to the words, "*more particularly those of your own family,*"—which, although introduced in a way not to appear forced, really had nothing to do with the business, which forms the ostensible excuse for writing the letter. There was no imaginable reason, in respect to *fitness for the agency*, why Mr. Boott should settle his accounts with his own family, "*more particularly*" than with other people. It may be noted, also, that Mr. Jackson speaks of the supposed necessity for settling up these accounts, and of Mr. Boott's reluctance to do so, as matters of "*conjecture.*" Would he have used that language, if he had been so fully informed of these matters *by Mr. J. Wright Boott*, as Mr. Lowell supposes, instead of having had the real difficulty suggested to him by Mr. Kirk Boott and myself, as I aver to have been the fact? Is the whole letter consistent with the idea of a direct disclosure from Mr. J. Wright Boott of any thing more than general embarrassment, and inability to get rid of all his responsibilities? Mr. Lowell's call of attention to the expression, used by Mr. Jackson, "*poorer than I had supposed,*" instead of "*bankrupt*" or "*defaulter,*"—by way of argument to show that Mr. Boott could not, before that time, have lost all his own property, with much that belonged to others,—requires no answer. It proves only, as the rest of the letter does, that Mr. Boott had not disclosed the *whole* state of his case to Mr. Jackson, and that so much as he did disclose, Mr. Jackson desired to allude to in the most delicate way.

CHAPTER XXXIV.

EFFECT OF MR. JACKSON'S LETTER. FURTHER LETTERS URGING AN ACCOUNT, IN VAIN. OPINIONS ENTERTAINED OF MR. BOOTT. MOTIVES TO LONG FORBEARANCE AND ACQUIESCENCE.

The effect of the letter from Mr. Jackson, mentioned in the last chapter, was, unfortunately, not such as we had hoped. There would have been no difficulty about furnishing the required bond. Friends enough stood ready to sign it, as Mr. Boott well knew. But nobody had the opportunity. Rather than make a statement of his family accounts, which, according to the letter, seemed to be an implied condition of the office, Mr. Boott, *within three days* after the receipt of this letter, *sent in his resignation!* [L. p. 85.] Why was this?—except that he could not bear the *disclosure* of so bad an account as he must disclose?—or that he was not *able* to make up his accounts in a manner satisfactory to himself?—or that he feared to involve *others*, with himself, in some loss of the common property, which could not be made good to those of the heirs, who had had no share in causing the loss? This is not for me to explain;—but *there is the fact, proved by Mr. Lowell himself*; and Mr. Lowell must choose among the alternatives to account for it.

The conjecture among us, at the time, was, that Mr. Boott, in addition to his general reluctance to settle accounts, might have been startled at the idea of the bond, because of its requiring him to be *obliged* to somebody for *suretyship*. This led to a new suggestion from Mr. Kirk Boott. He thought of another advantageous employment for his brother, which would avoid that difficulty; namely, the sending him to England to purchase iron for the Lowell Railroad, then about to be built under the direction of Mr. Jackson. This, being an ordinary mercantile agency, would require no bond; and it was a kind of commission, which Mr. J. Wright Boott was thought

well qualified to execute, since he had been devoting himself, for the last five years, to the study of the iron manufacture, and to its practice, in some branches, at the foundry, and had, also, the facility of established connexions in England. Mr. Kirk Boott first suggested it, I believe, to me, in the letter, heretofore quoted, of May 22, 1831. [Ante, pp. 279, 280.] It was coupled with the idea, that such an appointment "would give him [Mr. J. Wright Boott,] a consideration with those concerned with us," (that is, the gentlemen concerned at Lowell;) "would turn the whole current of his ideas;" and that he might, afterwards, get the agency of the Lawrence Company, then in contemplation, if he could be induced to accept it. [Ante, p. 280.] I thought very well of the plan, after the transfers of property had been made, which, in acting under Mr. Kirk Boott's letter, seemed to me the pressing matter most immediately called for.

Mr. Kirk Boott seems, shortly after, to have made a direct application on the subject to Mr. Jackson, as head of the Lowell Railroad Co.; and that gentleman answers in the letter of May 30, 1831, printed by Mr. Lowell, [L. p. 102.] and to which I refer. It contains nothing very material to the present purpose, except what has been already mentioned,—namely, the fact of Mr. Lowell's having agreed with Mr. Jackson that "now is the time, if ever, when he [Mr. Boott,] should settle up every thing and free himself from all engagements and responsibilities on old concerns." If he should do that, the further opinion of those gentlemen, as expressed in the letter, was, that he ought to take the charge of the Suffolk Company, unless some good person should be found to take his place;—to which Mr. Jackson adds,—"If this can be settled satisfactorily, I am sure he is the best man we can send to England."

This letter of Mr. Jackson to Mr. Kirk Boott, was transmitted by Mr. Kirk Boott, in a letter from himself to his brother, [L. pp. 102-3.] which communicates the offer of Mr. Lowell to go to Philadelphia for the purpose of endeavouring to effect a settlement with the Ralstons. There are some passages in this last mentioned letter, which I may

have occasion to refer to in another connexion; but none material at present, except the following sentence, on which Mr. Lowell finds some comments “However little you are inclined to think of yourself at this moment, I do consider it of the *utmost importance*, to your future happiness and usefulness, that you should be *relieved from your embarrassments.*” The letter then very earnestly urges upon Mr. J. Wright Boott to give to the subject “a calm and dispassionate consideration,” and it expresses a fervent hope that he might arrive at the conclusion, formed by Mr. Kirk Boott himself, which, manifestly, was, that his brother should come to a complete settlement of accounts, and then accept one or the other of the agencies proposed.

Mr. J. Wright Boott had, then, before him, in these several letters, the concurrent opinion of Mr. Jackson, Mr. Lowell, and his own brother, pressed with as much urgency as was likely to be tolerable even from them, that he *must settle his accounts*, as a first step to any useful employment, or lucrative pursuit. As for myself, he had told me, upon a former occasion, when I had called, by his own invitation, to advise and aid him,—the morning after his giving me the memorandum of 1830,—“that he considered himself quite competent to manage his own affairs, and that when he should have any doubt of it, and should require my interference, or advice, he would take care to let me know it.” [B. p. 38.] Since that, I had, within a few days, been unhappily compelled, in the manner before shown, to obtain from him the transfers, just made, to secure the estate;—which, though very readily given, to all appearance, left me I knew, at the moment, in no especial favour;—and it was manifest that any further interference from *me*, about a family settlement, would only lead to a rupture. But I knew of Mr. Kirk Boott’s letter at the time of his writing it, and it was plain, that, if that were not effectual, nothing else could be done, to obtain the accounts, short of coercion, attended by a family feud, and, worse than all, by inevitable publicity and ruin to Mr. J. Wright Boott, which would have defeated all our hopes and objects in attempting to rescue him from his un-

fortunate position. Yet these accounts, so urged, *never came.* Can Mr. Lowell tell us why?

His only suggestion is, that Mr. Boott delayed the settlement, because he could not bear to bring in an account that would have made his brothers and sisters *debtors to him!* [L. pp. 34, 58.] It would be a curiosity to see how Mr. Lowell would have made up *that* account, upon the state of affairs in May, 1831. He has, perhaps, shown ingenuity enough for it, in the account of 1844.

The comment upon Mr. Jackson's letter to Mr. Kirk Boott, "on the subject of employing his brother in a business [the purchasing of the iron] in which large sums of money must necessarily be intrusted to him, and where great accuracy and fidelity were required in the management," lies in the following query:—"Now is it to be believed, unless Mr. Brooks means to impeach the character of Mr. Kirk Boott also, that that gentleman would have recommended, or *allowed to be selected*, a person who had been guilty of the *moral delinquencies* attributed by Mr. Brooks to Mr. J. Wright Boott?" [L. p. 103.]

The letter of Mr. Kirk Boott to his brother, which enclosed the letter from Mr. Jackson, is, in the first place, used by Mr. Lowell, as evidence that this plan of sending Mr. Boott to England, on business of the railroad, "originated with Mr. Kirk Boott," which I also state to have been the fact; and, in the next place, a comment of admiration is made upon the "spontaneous tribute" paid to "his brother's disinterestedness,"—a quality, which I also expressly conceded to him in an eminent degree. But the occasion of this "spontaneous tribute," doubtless, was some language of his brother, similar to that used in a cited letter, [Ante, p. 275.] expressing his indifference, about himself, as to the means of subsistence, if his mother's comfort and happiness could be saved from destruction. It was, no doubt, thought, by Mr. Kirk Boott, to be the best mode of approaching his brother on a delicate subject. A succeeding comment by Mr. Lowell relates to a different point; and I reserve that for another connexion.

The "Reply" next introduces a passage from Mr. Kirk Boott's letter to me, of May 22, 1831, (which I have above printed entire,) expressing the opinion that his brother is "admirably qualified" for this business of purchasing iron in England, and that "the new concern," (rightly interpreted by Mr. Lowell to mean "the Lawrence Manufacturing Company at Lowell, then just starting with the object of making and printing calicoes,") would be, on his return, "a much better field for him" than the Suffolk agency, which he had just resigned. The comment upon this is, that, "to suppose Mr. Kirk Boott entertained the views of Mr. Wright Boott's administration of the trust funds now attributed to him by Mr. Brooks, at the moment he was urging his claims to be appointed treasurer and agent of the Lawrence Manufacturing Company, with a capital of a million of dollars, *is as much a libel on Mr. Kirk Boott's memory as on that of his brother.*" It is asked, too, whether the inference is not very reasonable that *I*, myself, could not have entertained such views at that time;—whether it is credible that Mr. Kirk Boott, "then far from being rich, would have *allowed* the trust funds, under his father's will, to *remain* in the charge of a person, who had administered them as is represented by Mr. Brooks;"—whether Mr. Brooks himself would have done so;—whether, notwithstanding his affectation of "lofty indifference to mere pecuniary considerations," he extended "the same indifference to the interests of all the rest of the family;"—and, being a trustee under Mr. Kirk Boott's will, since 1838, and affecting to be "peculiarly sensitive" on that subject, how happened it, it is further asked, "that he [Brooks] remained quiescent for six years?" and "why was his conscience dormant, during that long period, to awaken only when, as I shall presently show, he had come to be on terms of *personal hostility* with Mr. Boott?" The conclusion on this head is, that "it is a little too much to ask the public to believe, that he [Brooks] ever seriously thought Mr. Boott to be the man this pamphlet would represent him, *till he had become blinded by his own excited feelings of animosity;*" and that "it is very evident

that he did *not* believe, at that time, *in any such default and insolvency as he now attempts to make out.*" [L. pp. 104—6.]

Now I request the reader, who is blinded by no feeling in the case, to believe nothing but the inevitable deduction of his own faculties from the evidence given to him. If the above cited comments were ever so well warranted, and all the flourishes in them were nothing but literal truths, they would not alter a single fact in the case; and proved facts are the things, which, after all, are to settle the merits of this controversy.

But my answer to this whole course of commentary must have already suggested itself, mainly, to every intelligent reader.

In the first place, it is utterly untrue that I had charged Mr. Boott with any "moral delinquencies," unless neglecting to settle his accounts, and allowing trust funds to stand uninvested, and mingled with his own property, undistinguishably, deserve to be thus harshly designated. These are facts, which Mr. Lowell admits; and, in respect to that species of delinquency, he says, himself, "the utmost that can be made of it is, that it was an irregularity; and that after all, carelessness is not a crime." [L. p. 89.] In truth, I had gone much further than Mr. Lowell goes, in suggesting charitable defences for Mr. Boott; since I had stated all sorts of excuses, and palliations, from circumstances, which the "Reply" either takes no notice of, or attempts to discredit. I am aware, that Mr. Lowell affects to regard my remarks, on the passing of the account of 1844 at the probate office, as imputations of fraud and perjury. I shall present my view of that, when I reach that subject. At present, it is enough to say, that all such gross imputations are of Mr. Lowell's coinage, not mine. They are the inferences, which he pleases to draw, or to pretend, and which I do not draw. Comments of this sort, as before remarked, do not alter the facts; from them every unprejudiced reader will draw proper inferences for himself, so far as it is needful to draw any, respecting the character of Mr. J. Wright Boott.

In the next place, as to the recommendation of that gentleman, by Mr. Kirk Boott, his brother, for these several offices and agencies, I have already stated that no impeachment of Mr. J. Wright Boott's honour, integrity, honest intentions, and good motives, had arisen, either in my mind, or, as I believe, in that of Mr. Kirk Boott, from his mismanagement of the trust funds, under all the known circumstances of the case, including his peculiar and most extraordinary ideas of his own supremacy over the family property. They went so far that he once stated to me, that his father intended, by his will, "to give him all he left over \$100,000!" [B. p. 59.]

So, in respect to his *competency*, at that time, for the situations proposed, though that was, necessarily, in a degree, experimental, nobody doubted his general intelligence, and power of application, even to details of business, if he pleased to exert it. It was notorious, too, that he had been, for many years, bestowing his whole mind upon studies and pursuits congenial to the kinds of business proposed for him; and it was believed that he must, thereby, have acquired considerable experience, and much valuable information. What reason was there, then, to distrust, beforehand, his suitableness for the limited duties proposed?

Nobody imagined, that Mr. J. Wright Boott, if sent abroad, with a credit upon London, to purchase iron, would put the money in his own pocket, and run away with it. Nobody feared, because he had mismanaged family funds, over which he had been permitted, for years, to exercise an unlimited discretionary control, without accounting to any one, that he would divert, to speculative uses of his own, money intrusted to him by persons, with whom he stood in no familiar relation, and to whom he must, in the course of that business, be constantly and stately accountable. Nor was there any reason to doubt, that, with the usual aid of competent clerks, he would be able to keep, under the eye of intelligent directors of a great manufacturing corporation, suitable accounts, to inform them, from time to time, of its affairs. There was no great reason to apprehend, that he would

imagine, under these necessary checks and restraints, as he did, in the case of his father's estate, from the utter want of them, and from long habit of absolute dominion, that the property was pretty much his own, to do with as he pleased, or that a body of manufacturers, with a capital of a million of dollars, intended, by making him their treasurer, "to give him all over \$100,000."

But, beyond all this, it is not to be forgotten, that both his failings and his qualifications were judged of by the friendly eye of a brother, directed to a turning point in a brother's life,—a point, which presented the serious issue, whether a man, who is now described by Mr. Lowell as so richly gifted, and who, all agree, had many interesting and valuable traits, should be raised from the depths of his embarrassments to a probability of future usefulness, acquisition and honour, or should be allowed to sink, forever, into a certainty of hopeless poverty, insolvency, and despondence, with danger of public disgrace. Such was the question for Mr. Kirk Boott to act upon. Is it not, then, a libel, indeed, on Mr. Kirk Boott's memory, to suggest, as Mr. Lowell does, that if he knew that this brother, though acting with honest intentions and generous motives, had injudiciously managed and lost much family property, in the manner and under the circumstances stated, he himself would, or should, on that account, have utterly abstained from ordinary fraternal recommendation and influence, to procure him an agency or office, for which he was believed to be otherwise well qualified, and in which he would not be exposed to the temptation, or to the possibility, of committing similar errors? Is Mr. Lowell so stern an advocate for truth, and the whole truth, under all circumstances, as to hold, that it was rather the duty of Mr. Kirk Boott, in these circumstances, not even to have "*allowed to be selected*" such a brother for such an agency?—but rather to have interfered to prevent it, by volunteering a discovery of all that had happened, and publishing him as a "bankrupt" and a "defaulter"?—for those are the gentle terms, which Mr. Lowell chooses to apply to the exact case. Most

readers, I apprehend, will be slow to arrive at such harsh judgements.

In respect to Mr. Kirk Boott's acquiescence, during the residue of his life, and my own acquiescence, then, and long after that gentleman's decease, in a position of the family property so extremely unsatisfactory, what was the alternative? Communication of the fact to all the family, and application to the Judge of Probate to compel the account, which Mr. J. Wright Boott, though much urged, would not voluntarily render. In other words, the sole alternative was, destruction of the family peace; domestic parties and feuds; publication of a brother's default, who was not believed to have been a defaulter by design, or for a selfish end; and all this while he was doing nothing, and threatening nothing, to aggravate the mischief, which had already happened, and which could not be thereby remedied; and when he had, already, deprived himself, to some extent, of the power to commit further accidental waste, by having *marked*, as *trust* property, all the property there was left; and while there was, for a long time at least, a faint hope that he might yet turn himself to some new and useful employment, tending to improve the condition of affairs.

In 1844, it will be seen, in due time, that an entirely different state of facts existed. The family peace was already broken; the parties were formed; the feuds had grown up; all hope of improvement was passed; further waste, though not yet extensive, had become visible; the symptoms of incompetency for such a trust had become aggravated into partial insanity, believed by some, disputed by others; and above all, there was an *act* to be done, or *refused*, according to which more trust property would, or would not, be put into his hands, without security, and with almost a promise beforehand that it was to be applied to a particular use, destructive to the interests of those, to whom it belonged. By whose fault, or what misfortune, all this happened, the sequel will show. But, in regard to my own supposed "hostility," and "animosity," towards Mr. J. Wright Boott, I have, for the present, only to repeat my former statement, that, so far

as I am capable of judging myself, I was actuated by no such feelings, at the time, to which Mr. Lowell alludes ; and, indeed, that none such had ever existed; unless during a previous short period of well-merited indignation, before I had come to the settled belief of Mr. J. Wright Boott's insanity.

But all this branch of the subject is for future consideration. At this moment, I desire to confine attention to the question of the truth and sufficiency of the account of 1844. To that end, I have exhibited the state of affairs in May, 1831, and the transactions of that period ; I have accounted for the acquiescence of Mr. Kirk Boott and myself, in what could not be helped but by encountering worse evils ; I have shown that Mr. Jackson had not that knowledge of the facts, which could have made his opinion valuable, if he ever gave one, on the question of Mr. Boott's management as a trustee ; and I have shown that no argument, against the facts, can fairly be derived from their supposed inconsistency with the concurrent efforts, which I admit, of Mr. Jackson, Mr. Kirk Boott, and Mr. Lowell, to procure, for Mr. J. Wright Boott, an important and profitable employment. In regard to Mr. Jackson's later opinions, which Mr. Lowell does not allude to, but which I have heard quoted, and which, if rightly quoted, must have produced a wide influence in this community, (I refer to general expressions of opinion, attributed to him, concerning Mr. J. Wright Boott's vindication by the account of 1844,) I may further say, in this connexion, that all such opinions, if pronounced, were merely the reflection of Mr. Lowell's opinions, and not founded on any personal knowledge, or examination, by Mr. Jackson himself. They prove nothing but Mr. Jackson's confidence in Mr. Lowell's statements, and, through them, in the sufficiency of Mr. J. Wright Boott's account. Opinions, so formed, however high the authority, from which they may seem to flow, add nothing to the weight of Mr. Lowell's opinion, whether real or pretended. And, I repeat, no man's opinion can alter stubborn facts, from which I ask the intelligent reader to form his own opinion.

CHAPTER XXXV.

STATE OF THE TRUST FUND AFTER THE LYMAN & RALSTON SETTLEMENT, IN SEPTEMBER, 1831. ITS REAL DEFICIENCY PARTLY COVERED UP, IN THE ACCOUNT OF 1844, BY A NEW VALUATION.

Having now disposed of the occurrences in the month of May, 1831, I may proceed to the next event, which materially affected Mr. Boott's pecuniary position; namely, a settlement with Messrs. Lyman & Ralston, made by Mr. Lowell, for Mr. Boott, as he tells us, [L. p. 109.] in the month of September, 1831. [L. p. 107.] At the time of his undertaking that business, whenever it was, he admits that he received, from Mr. J. Wright Boott, what he supposed to be "a full exposition of his affairs;" [L. p. 78.] and the date of Mr. Jackson's letter of May 30, inclosed in the letter of Mr. Kirk Boott communicating Mr. Lowell's offer to undertake the agency, fixes, very nearly, the probable time of that exposition, which Mr. Lowell, as we have seen, is so unlucky as to fix, with great positiveness, in the month of August, for the purpose of proving, that, in May, he could not, possibly, have known any thing of Mr. Boott's affairs, except from my representations. [Ante, p. 301.] "It was some weeks," he informs us, and he probably might have said months, "before I succeeded in bringing it to a successful issue." [L. p. 79.] He also tells us, that all the original papers, relating to that settlement, are still in his possession. [L. p. 109.] He produces none of them; but he gives his own account of the settlement as follows:—

"The terms were briefly these. The whole property in the Mill-dam Foundery was to be sold to a joint stock company, to be created for that purpose, who were to take upon themselves the debt of \$2500 to Colonel Thorndike; the mortgage made the preceding year was to be discharged; Messrs. Lyman & Ralston were to pay at once

\$16,000 of the indorsed paper, and Mr. Boott was to continue his indorsement for \$14,000 for the term of one year; they were to assign to Mr. Boott their reversionary interest in the real and personal estate of Mr. Boott, senior, and to pay him \$7,624, by their note, with collateral security, payable in two years, with interest; they were also to give security for the outstanding indorsements. All these stipulations were fulfilled; and the collateral security remained in my hands, until the indorsed notes and their note for \$7,624 had been paid in full." [L. p. 79.]

I shall presently give my reasons for suspecting that this statement, by Mr. Lowell, omits some terms in the settlement quite material to our controversy. At present I take it to be complete and accurate.

I have, heretofore, admitted my errors in recollection of some of the details of these old transactions, and have shown that Mr. Lowell's account of the final settlement, as derived from the papers, differs, after all, from that previously given by me, from memory, in nothing material, except the payment, by a secured note, of \$7624, which was so much addition to Mr. Boott's present resources. [Ante, Ch. 5.]

I have, also, heretofore remarked, on the assignment to Mr. Boott of the reversionary interests of Mrs. Lyman and Mrs. Ralston in their father's estate, that this added nothing to his resources for the payment of debts, or for the making good of the trust funds required by the will. Their reversions in two undivided ninth parts of the mansion-house, subject to the life-estate of Mrs. Boott, were property, to be sure; but their full present value, in 1831, supposing the estate to have been then worth about \$30,000, was shown, upon the principle of the annuity table, to be little more than about \$3300; [Ante, p. 254.] and this value, whether more or less, was never realized by Mr. Boott, by sale or otherwise, for the purpose of applying it to his debts, or his trust funds. As to their reversions *in the trust funds themselves*, these, of course, as was formerly remarked, added nothing to the funds, and are not to be esteemed property for that purpose. I now add, that the assignment of them to Mr. Boott could, in no event, be valuable to him, as property, unless the whole property of the estate (besides the mansion-house) left to be accounted for

by him, at the death of Mrs. Boott, should more than suffice to pay all he might owe, as executor, to all the other heirs. When they should all be paid, but not otherwise, these shares would become available to him, out of the surplus, if there were any ; and this might constitute a species of vested interest, which he could dispose of as he pleased. But, if the fund were defective, and all could not be paid in full, an assignment, to the executor, of the reversionary interest in it of Mrs. Lyman and Mrs. Ralston, could operate only as an extinguishment of all future accountability, by him to them, for their shares of the fund. In point of fact, the terms of the instrument were such as to release him, also, from any *present debt* he might owe them, as executor, on account of moneys of the estate, which had come to his hands, not belonging to the particular trust funds. [See Deed, B. App. p. 24.] Hence, according to my view of the case, the *real value* to Mr. Boott, of the *assignment* from those ladies and their husbands, lay in nothing but *his discharge* from two ninths of his whole accountability, as executor and trustee, and in the transfer to him of a reversionary interest in the *mansion-house*, then worth about \$3300 ; while the *chief* value to him of the *entire settlement* with Lyman & Ralston, consisted in *that discharge*, added to *his exemption from liability for the debts of the foundry*.

Here, then, is another resting-place, from which we may look back on Mr. Boott's pecuniary position, at the time of the reconstruction of the trust fund, in May, 1831. The largest item of property, in his memorandum of 1830, the Mill Dam Foundry, then valued at \$70,000, is now gone. He has, in its place, these reversions, whatever they may be worth, and \$7624 in a note, which was eventually paid, and may therefore be treated as equivalent to cash. But he is, also, relieved from his liability for debts contracted in the name of Lyman & Ralston. That is to say, the \$30,000 mortgage is discharged by the holder, in consideration of a certain number of shares in the stock of the new corporation organized by Messrs. Lyman & Ralston. Of the indorsed paper, on which he was liable to the amount of \$30,000,

\$16,000 is to be paid, at once, by Lyman & Ralston, and \$14,000 in one year; for this he has security, and since it was all eventually paid according to the agreement, or some extension of it, we may put it aside, as if paid already. So, his note of \$2500 to Mr. Thorndike, and all the other debts of the foundry, contracted in the name of Lyman & Ralston, or otherwise, are assumed by the new corporation; and since he was never called upon to pay them, they may be regarded, for our present purpose, as already extinguished. It will thus be seen, that, whether he was, at one time, liable for \$80,000, or \$30,000 only, by reason of his connexion with Lyman & Ralston, a question, which has cost so much discussion, in consequence of Mr. Lowell's songs of triumph, over my supposed mistakes and misrecollections, the point turns out to be entirely immaterial to the real issue, as will appear by the view I am now about to take.

The store had, at this time, (September, 1831,) been sold for \$16,000. A part of the proceeds had been applied, as I infer, to the reduction of the guardianship debt. The residue had, very probably, gone into the Mill Dam Foundry, the settlement with Lyman & Ralston being six or seven months later than the sale of the store. But, since there is no positive evidence of that, I shall take the guardianship debt as it stood *before* the reduction, and credit, against it, the *whole* \$16,000 proceeding from the store, and all that was received in cash, or its equivalent, from the sale of the foundry; and then let us see how the trust account comes out, taken on the day of the transfers intended to secure it, and valuing the properties sold, at what they produced:—

LIABILITIES.

Required amount of the trust funds,	\$111,111 12
The guardianship debt, Sept. 30, 1830, as per Tyler's statement, from the probate accounts, [Ante, p. 235.]	46,000 00
Debt to Mr. Lowell,	30,000 00
Debt to Mr. Sturgis,	21,000 00
	<hr/>
	208,111 12

<i>Liabilities, brought over,</i>	\$208,111 12
ASSETS.	
72 shares of Merrimack Manufacturing Company, at \$1160, [Ante, p. 289.]	\$83,520 00
39 shares of Boston Manufacturing Company, at \$700, [Ante, p. 289.]	27,300 00
Store, at what it sold for, in Feb. 1831,	16,000 00
Foundry, at what it sold for, in Sept. 1831, (exclusive of reversions,)	7,624 00
The stable, at what it sold for, in 1844,	1,500 00
Lilly's note, at what it eventually produced, by the gradual collections, and the final sale in Oct. 1836, [Ante, p. 291.]	10,033 39
<hr/>	<hr/>
Deficiency,	62,133 73
<hr/>	<hr/>

Or, taking Mrs. Boot's \$100,000 fund, alone, and disregarding the fund for the aunts, the deficiency was, still, more than \$50,000.

There is no ground, therefore, for a pretence that the two ninths, in reversion, of that trust fund, assigned to Mr. Boott in the settlement with Lyman & Ralston, were, at the time, worth any thing. They, with Mr. Boott's own share in it, would have amounted, if Mrs. Boott had died at that time, nominally, to about \$33,000 only ; and the deficiency in the fund was over 50,000. In other words, each heir would have been entitled, had the life-estate expired, to a little more than \$11,000 in present possession, that being one ninth of \$100,000 ; Mr. Boott, representing the shares of Mrs. Lyman and Mrs. Ralston, together with his own original share, would have been entitled to one third of the fund himself, and would have been bound to pay over \$11,000 to each of the other six heirs ; but the whole property in his possession, to represent that fund, after paying the debts, for which it was bound, would have been less than \$50,000 ;* which, divided

* Property, as above,	-	-	\$145,977 39
Debts, as above,	-	-	\$46,000
		30,000	
		21,000	
		97,000 00	
Left for the trust fund,	-	-	48,977 39

among the six persons, would have given them only about \$8000 each, instead of \$11,000. So that he would have been unable to pay them in full, even supposing him to have owed his father's estate nothing but the amount of the trust fund for his mother. So long as the life-estate continued, the whole income, whether more or less, from \$100,000, invested in the manufacturing stock, was due to Mrs. Boott; and, if the principal of that sum was deficient by \$50,000, her just income must, necessarily, be so much abridged, even if none of it were taken to pay off the principal of Mr. Boott's private debts. There is no pretence of any other assets of Mr. Boott, capable of being applied to this deficiency, except the then value of three ninths of the mansion-house, which, subject to the life-estate, must be set down at less than \$5000. This was never in fact so applied, and, if it had been, would have still left the fund deficient, by more than \$45,000.

To simplify the view still further, all the property, except that, which reappears under a new valuation in the account of 1844, may be taken in offset to the guardianship debt. Thus:—

The debt to the wards, before the partial payment from the proceeds of the store, was	\$46,000 00
Against it put, proceeds of store,	\$16,000 00
Cash proceeds of foundry,	7,624 00
Proceeds of Lilly's note	10,033 39
One share of Merrimack Manufacturing Company,*	1,160 00
	<hr/>
Balance of this debt, to be provided for,	34,817 39
	<hr/>

The rest of the property, which was kept till 1844, was, at its value in 1831, as follows:—

71 shares of Merrimack Manufacturing Company, at \$1160,	\$82,360 00
39 shares of Boston Manufacturing Company, at \$700,	27,300 00
Stable, at its price of sale in 1844,	1,500 00
	<hr/>
	111,160 00

* Seventy-one, out of the seventy-two, remained to the period of the account in 1844;—one had been parted with.

<i>Brought over,</i>	\$111,160 00
Deduct the balance of the guardianship debt, as above,	11,182 61
	99,977 39
Deduct the debts of Messrs. Sturgis and Lowell, for which the shares then stood pledged,	51,000 00
Net value of the fund, in May, 1831, Deficiency,	48,977 39
Nominal fund,	51,022 61
	100,000 00

By comparing this with the account of 1844, it is now easy to see how the means were provided for paying off the alleged cash balance of \$25,000 in Mr. Boott's favour, and yet leaving something near \$100,000, apparently, for the trust. In the first place, the debt to Mr. Sturgis had then (in 1844,) been paid off, and also \$5000 of Mr. Lowell's debt, in all \$26,000 ; which, with many years of interest, could have been paid, as I shall show, out of nothing but the income of the trust fund, provided the guardianship debt is assumed to have been paid out of the other funds above assigned to it. If not, so much of those other funds as went to pay, in part, the \$26,000 to Messrs. Lowell and Sturgis, was replaced by an equal amount of the income of the trust property applied to the guardianship debt. It is mere substitution, in the application of the income, to one debt or another, and makes no difference in the result. This subject,—the application of income,—I shall return to. At present I only mark the fact, that the incumbrance on the trust property, in May, 1831, had been reduced, in 1844, by some means, from about 62,000* to \$25,000, the then balance of Mr. Lowell's debt. Thereby, the deficiency in the principal of the trust fund,

* Debt to Mr. Sturgis, \$21,000, to Mr. Lowell, \$30,000, \$51,000
 Balance of the guardianship debt, after applying all other means, 11,000

 62,000

upon the valuation of 1831, was reduced from \$51,000 to about \$14,000.*

In the next place, the account, instead of exhibiting that amount of deficiency, exhibits, when strictly analyzed, a deficiency of less than \$4000, with an alleged "cash balance, due to the executor," sufficient to cover Mr. Lowell's debt. How is this seemingly favourable change produced? Simply *by charging the property at a different valuation*, founded upon its alleged *cost to Mr. Boott*, thus:—

The 71 shares of the Merrimack Manufacturing Company, instead of being put at their value when first put in trust, viz. \$1160 per share, are, with great apparent liberality, put at only the par of \$1000 per share,

\$71,000

This takes off \$11,360 of the value, at which I place them to the trust account. But the 39 shares of Boston Manufacturing Company, instead of being put at \$700 a share, (which is what I rate them at, and all they were worth when first put in trust,) are charged, 18 of them, at \$1150 each, and 21 of them at \$1300 each, making in all, for that item, instead of \$27,300, no less than

48,000

Being an addition of \$20,700. And the stable, instead of \$1500, which was more than it was worth in 1831, is charged at

2,500

\$121,500 00

Deduct the alleged cash balance, resulting from the admitted receipts, and alleged payments of the account,—being just the amount of Mr. Lowell's debt and a fraction over,

25,215 45

and it leaves, at that valuation, to represent the trust fund,

96,284 55

* Paid off, Sturgis,	- - - - -	\$21,000
" Lowell, on account,	- - - - -	5,000
Balance of guardianship debt, as above, also paid off,	- - - - -	11,000
Total,	- - - - -	37,000
Deficiency of the trust fund, in 1831,	- - - - -	51,000
Incumbrances paid off, as above,	- - - - -	37,000
Deficiency (on the same valuation,) in 1844,	- - - - -	14,000

<i>Brought over,</i>	\$96,284 55
In other words, the account, in providing for a cash balance sufficient to cover Mr. Lowell's debt, exhibits a deficiency, after all, in the trust fund, of	3,715 45
Nominal trust fund,	<u>100,000 00</u>
In short, the property placed in trust in May, 1831, is charged in 1844, at	\$121,500 00
The same property, (clear of debts,) when put in trust, in 1831, has been shown [Ante, p. 354.] to have been worth only	<u>111,000 00</u>
Difference,	10,500 00
The deficiency in Mrs. Boott's trust fund, according to the account of 1844, is, still, over	<u>3,700 00</u>
	<u>14,200 00</u>

So that the greater part of Mr. Lowell's debt appears, at last, to have been provided for out of these two sources :— That is, by taking \$3700 from the fund, which the "Reply" admits Mr. Boott was bound to have had on hand, and to have paid over in full to his successor in the trust ; and by charging the property, standing in the executor's name, at \$10,500 more than it was worth when it became the property of the trust. If, on the other hand, he had charged it at its value in May, 1831, (the alleged receipts and payments in the account being as they now are,) the taking out of the alleged cash balance, for the payment of the debt to Mr. Lowell, would have left the capital of the trust fund deficient, in 1844, by more than \$14,000,* even if no part of its income had been previously applied to the payment or reduction of Mr. Boott's other debts, which is a separate question. The *propriety* of this valuation of the property, under the circumstances, I shall presently consider. Just now, I only point out the fact, that it was essential to the means of providing for payment in full to Mr. Lowell, without a more glaring subtraction from Mrs. Boott's trust fund, than can now be detected from the figures on the face of the account.

* Value in 1831, as shown, [Ante, p. 354.]	\$111,000
Balance of the account of 1844,	<u>25,000</u>
Left for the trust fund,	<u>86,000</u>

CHAPTER XXXVI.

ANOTHER CHARGE AGAINST ME OF MISREPRESENTATION TURNED UPON MR. LOWELL. A QUERY RESPECTING HIS ALLEGED LIEN ON THE STOCKS IN 1844.

I will now ask the reader's attention to another grave charge brought against me in the "Reply,"—a charge of a misrepresentation, either by design, or by criminal negligence and false assumptions, injurious to Mr. Boott, respecting payments on account of his debt to Mr. Lowell. I wish the reader to see who makes the substantial misrepresentation here.

In the foregoing chapter, for the sake of presenting, more clearly, the actual condition of Mrs. Boott's trust fund, in October, 1831, I assumed the application of all the cash received by Mr. Boott, (whether before or after that date,) from the sale of the store, and of Lilly's note, and of his interest in the foundry, to the reduction of his guardianship debt as it had stood in 1830. I do not mean to be understood that those moneys were all, in fact, so applied; I believe otherwise; and the reader shall see such evidence as I have, tending to show the time and manner, in which, and to determine out of what fund, Mr. Boott's debts, remaining after the settlement with Lyman & Ralston, were severally discharged.

In respect to the debts due to Messrs. Sturgis and Lowell in May, 1831, (when the property was put in trust,) the time and manner of the only payment for the reduction of either of them made by Mr. Boott, so far as I am informed, out of any means not proceeding from the property itself, so placed in trust, appears by the following letter from Mr. Boott to me. If I am not right in this, let Mr. Lowell show whence any other payments did come.

LETTER FROM J. W. BOOTT TO E. BROOKS.

DEAR SIR:

As you consented, yesterday, to apply the dividends and interest on the stocks and note in your hands, towards the payment of my note to Mr. Lowell, I have this day anticipated the receipt from you of them, and have paid to Mr. Lowell \$5,000. Therefore, at your convenience, I request you will be good enough to send me a check for such sums as you have received, and to hand over to me the interest on Mr. Lilly's note, when it shall be paid.

Yours truly,

JNO. W. BOOTT.

ED. BROOKS, Esq.

Nov. 22, 1831.

In my former pamphlet, I was unable to point out the source from which this \$5000 was probably derived. [B. p. 47.] I now infer, from the proximity of time, and the want of other cash means, that it was part of the \$7624 received, according to Mr. Lowell, out of the settlement effected with Lyman & Ralston about two months before. The note, taken for that sum, must have passed into Mr. Lowell's hands, as the agent of Mr. Boott in that transaction, and, probably some assignment was made, by which \$5000 of it was applied to the reduction of the debt due to Mr. Lowell; which may well have happened unknown to me.

From the foregoing letter of Mr. Boott, it further appears, that I had consented, at his request, to apply the dividends and interest, accruing on the stocks and on Lilly's note, held by me in trust under the agreement of May 23, 1831, towards the payment of his "*note to Mr. Lowell*." And as Mr. Boott, it seems, had himself paid \$5000, on the 22d of November, 1831, in anticipation of those receipts, I paid to him, towards his reimbursement, as he requests, on the following day, the amount of cash then in my hands, being \$1440, as appears by his receipt. [B. App. p. 26.] By a subsequent agreement, all my further collections from that trust property, while it remained in my hands, amounting to more than \$10,000, were handed to Mr. Boott, from time to time, to be applied by him towards further payment of his "*note to Mr. Lowell*," except \$2000 of it, which I handed

to Mr. Lowell, for that purpose, myself. These payments were made under the idea that the property in my hands was ample to secure the guardianship debt, and that the reduction of the debt due to Mr. Lowell, for which stocks belonging to the estate were pledged, out of any *surplus* in my hands, was entirely consistent with the objects of my trust. The receipts of Mr. Boott, which I formerly printed, [B. App. pp. 26—8,] generally express his agreement to make this special application of the money; and the fact, formerly stated, [B. p. 48.] of the payment of the \$2000 by me to Mr. Lowell, is not disputed by him.

The effect of all these payments, by Mr. Boott and myself, should have been, as I formerly remarked, [B. p. 48,] to have reduced his debt to Mr. Lowell, "*unless new loans were made,*" from \$30,000 to \$15,000 at most; for the dividends, on the stocks, which Mr. Lowell held as security, must have more than kept down interest. I then remarked as follows:—

"Yet it is certain, that at the time of the settlement of accounts in December, 1844, which will presently be spoken of, the balance of principal claimed by Mr. Lowell as still due, remained at \$25,000, precisely as it was after the payment [by Mr. Boott] of the \$5000, in November, 1831. That is to say, presuming that to have been the true balance of debt, Mr. Wright Boott had not so managed his affairs, during those thirteen years, as to have been able to reduce the debt one dollar, notwithstanding that he had received from me, within the *first three years* of the series, by payment either to himself or to Mr. Lowell, upwards of \$10,000 *for that specific object*; and notwithstanding that the aggregate income, from all his manufacturing stocks, had averaged, during the entire period, between \$12,000 and \$13,000 a year, and was in one year little short of \$30,000. How this should have happened, Mr. Lowell, perhaps, can explain. For myself, I know nothing of the arrangements between him and Mr. Wright Boott." [B. p. 48.]

Mr. Lowell's remark on this is:—

"How cruel this imputation appears, when the truth comes to be told, that Mr. Boott reduced his debt to me **TWENTY-SIX THOUSAND DOLLARS** during those very thirteen years!" [L. p. 97.]

The capitals are Mr. Lowell's,—that being a form of type,

to which he has no objection, it would seem, though Italics he considers rather unfair. [L. p. 83.]

As the steps, by which Mr. Lowell arrives at this comment, and a further one, which I shall presently quote, afford a remarkable specimen of his keen perception of truth, and high estimate of its value, in an argument, I must ask the reader to consider them well.

In the first place, he must be informed that, just before the remark, which calls forth Mr. Lowell's animadversion, I had stated, that, not long after April, 1833, (a point of time not yet arrived at, but which I now anticipate for this purpose,) there was a general improvement in affairs; that the business of the Mill Dam Foundry, "so far as Mr. Wright Boott's concern in it extended," had been wound up; that property, generally, had been restored to its usual value; that the manufacturing companies made good dividends; that the store, in State-street, had been sold for \$1000 more than it had been estimated at, in Mr. Boott's memorandum of 1830; to which I added as follows:—

"The proceeds, (\$16,000,) and receipts from dividends on the manufacturing stock, had enabled him to pay off his debt of \$21,000 to Mr. Sturgis, and to relieve the forty-two shares of the Merrimack stock, which had been pledged in that quarter. But, in the mean time, he had been obliged to rely on Mr. Lowell, I presume, for some further aid; for, in the course of these transactions, twenty-one of those shares appear to have been transferred to Mr. Lowell, who already held ample security for his former loan of \$30,000." [B. p. 46.]

Immediately following this, I narrated the payment, above-mentioned, of \$5000, by Mr. Boott to Mr. Lowell, in November, 1831, and the subsequent payments, which were, or should have been, made out of funds coming from me; and I concluded my remarks on this subject with the passage, (above extracted,) which leads Mr. Lowell to sport with capitals, in the manner before shown.

Now I was mistaken, as I have since found, in supposing that the *proceeds of the store* were specifically applied to the payment of the Sturgis loan. But it was of no manner of consequence, to the view I was then taking, whether that

particular debt was paid, in part, by that particular piece of property, or from the proceeds of any other property included in the memorandum of 1830. I gave credit for the store as applied to the payment of debt; I mentioned the fact that the *Sturgis* debt was paid; and I pointed to the fact that the transfer, by Mr. Sturgis, of one half of the shares he held, to Mr. Lowell, *indicated some new advance* by Mr. Lowell to Mr. Boott, requiring that additional security; and I then proceeded to show, that, *unless* that were the case, Mr. Lowell's debt ought to have been reduced, by particular sums of money agreed to be so appropriated, to \$15,000, instead of standing, as it did in 1844, at \$25,000. The point of the whole course of remark was, to show a degree of mismanagement in this,—that, notwithstanding the large income from the stocks, and the \$10,000 furnished, through me, expressly for the further payment of the \$25,000 remaining due on Mr. Lowell's \$30,000 note, *that* debt did not appear to have been reduced at all in thirteen years, although Mr. Sturgis's debt of \$21,000 was, as I stated, at some time, and by some means, wholly paid off.

Mr. Lowell, finding in this statement an immaterial mistake, (as to the source whence I supposed the money to have come, which went to Mr. Sturgis,) seizes upon that, and exhibits it to his reader, as if it were a fact vastly material, and leading to an important consequence, most injurious to Mr. Boott. I give his own language:—

“Mr. Brooks here undertakes to state, as from his own knowledge, not only that Mr. Boott paid the debt to Mr. Sturgis, but also from what sources he derived the money for such payment.

“It is a very important question, what degree of reliance is to be placed upon a statement so deliberately made and so circumstantial in its details. The question is easily resolved.

“Mr. Boott did not pay the debt to Mr. Sturgis at the time and from the sources specified. I paid the \$21,000 to Mr. Sturgis, and took the debt to my account, as trustee, at the request of Mr. Boott, who preferred to be indebted to me alone. The effect of the transaction was to relieve one half of the stock which had been pledged to Mr. Sturgis; as the shares which I already held, with the twenty-one shares transferred to me by him, amply secured me for the whole of my advances.” [L. p. 95, 96.]

Now this fact of Mr. Lowell's having advanced the \$21,000 to Mr. Sturgis, and having taken that debt, also, to his own account, by purchase and assignment, is one, which had never been communicated to me, by either Mr. Lowell or Mr. Boott, (although my position was such, in relation to the whole business, that it manifestly should have been,) and I had understood, generally, from Mr. Lowell, that the debt to Mr. Sturgis had been paid. But, though ignorant of the manner of its payment, I was not guilty of any negligence on the subject, when preparing my former statement.

I had obtained, in the first place, from the treasurer of the Merrimack Manufacturing Company, the account, as it stands in the books of that company, of all shares transferred to and by Mr. Boott, as executor. Thence it appeared, that Mr. Cushing, for whom, and in whose name, Mr. Sturgis acted, had transferred, as I already knew, in May, 1831, to Mr. Boott, as executor, the forty-two shares, which, in January, 1830, Mr. Boott, then holding them in his own private name, had pledged to him on his individual account; and I knew, also, that the same shares were immediately retransferred, by Mr. Boott, as executor, in pledge for the same debt. But this retransfer did not appear to have been put on record till November 24, 1831; and on the same day, the record showed a final surrender, to Mr. Boott, as executor, from Mr. Cushing, of *twenty-one, only*, of these shares. [See Record of transfers, B. App. p. 31.] What became of the other twenty-one, did not appear by the transcript from the record, with which I had been furnished.

Hence, being in doubt, whether there might not have been a partial payment of the debt to Mr. Cushing, in November, 1831, and a renewal of the residue for some further time, and being in doubt, also, of what finally became of the twenty-one missing shares, I next applied to my friend Mr. Sturgis for information; and learnt from him, after he had consulted his books, (from which he furnished me with a memorandum,) that the note was *paid in full* in November, 1831, and that *all* the collateral security was then given up. His books, of course, contained no entry of the manner, in which the pay-

ment was made, whether by Mr. Boott in person, or by Mr. Lowell for Mr. Boott, or otherwise; nor of the particular transfers of the collateral security, which were made, of course, according to Mr. Boott's orders at the time. The transaction was, so far as he knew or remembered, a simple payment of the debt, and surrender of the collateral.

I afterwards found, at the office of the Merrimack Company, that the twenty-one shares, unaccounted for, had been transferred to *Mr. Lowell*; and thence, I inferred, correctly, as it now appears, that Mr. Lowell must have made some *new advance* for Mr. Boott; but I also inferred, incorrectly, as now appears, that Mr. Sturgis must have been paid, partly, from the proceeds of the store, sold a few months before. Mr. Lowell was the only other person in the world, who knew the facts; and he was the last person in the world for me to seek correct information from, on any point affecting this case.

The "Reply," however, proceeds to remark, "that these things are stated as facts, and within the writer's knowledge; and that one of the points stated is, that Mr. Boott derived from the *dividends on the manufacturing stock*, in part, the means of paying his debt to *Mr. Sturgis*." [L. p. 96.]

That statement I shall show, notwithstanding Mr. Lowell's denial, by implication, to be perfectly true in substantial effect, if not to the letter; and true even to a greater extent than I had stated it. It is true to the *letter*, with this exception, only, viz. that Mr. Boott paid the dividends to *Mr. Lowell, standing in Mr. Sturgis's shoes, as his assignee of the debt*, instead of paying them *directly* to Mr. Sturgis;—a distinction without a difference, except in *name*. Perhaps, as we are bound to sail by the card in this matter, I ought not to say, now, that *Mr. Boott paid* the dividends to Mr. Lowell; but, to avoid another philippic, against such heinous inaccuracies, and to meet Mr. Lowell's high notions of exactness in the statement of literal truth, I ought rather to say, that Mr. Lowell, holding the shares in pledge, *took* the dividends, and *paid himself*. At any rate, for the fact that the dividends were *the means of paying* Mr. Lowell, besides

other reasons, which will presently demonstrate it, I may cite the authority of Mr. Lowell himself,—who contends, (and the truth of that we shall see in due time,) that one sixth part of the income from all the manufacturing stocks, which appear in the probate account, *belonged to Mr. Boott*; and that he had a *right* to appropriate \$2000 a year from it to his own use; to which the “Reply” adds,—“It was *for this very purpose*, that the debt to me [Lowell] was permitted to continue, instead of being paid off by a *sale* of a portion of the stock in 1831.” [L. p. 92.] Yet, while making this admission, he tells his reader, almost in the same breath, that my allegation, that these dividends formed part of the means of paying the Sturgis debt, (which had become a part of the debt to Mr. Lowell,) was an error, no less than my allegation that the proceeds of the store were applied to that debt; and he declares that “*such* an error as the above, however innocent in its inception, is very apt to lead to the most *unjust conclusions*;” and that “this is *eminently* the case in the *present instance*.” [L. p. 96.] In proof of which, he refers to my above cited statement, concerning the \$10,000 paid by me to Mr. Boott, for the reduction of his debt, to Mr. Lowell, and proceeds as follows:—

“ Laboring, however, under the preconceived opinion that the Sturgis debt had been *paid*, and that my debt was only \$30,000, and finding my debt to be still \$25,000, he [Brooks] *draws the inference*, or *endeavours to make his readers draw it*, that Mr. Boott had *deceived him* in this matter, and had not applied the money as he agreed to do.” [L. p. 96.]

Now I appeal to every candid reader of my former remarks that I neither drew, nor desired others to draw, the inference, that there was any intention of *deception* in the case. On the contrary, I expressly excluded it, [B. p. 47.] and only stated the necessary alternative, resulting from the state of the debt, that either Mr. Boott could *not* have paid the money to Mr. Lowell, or that the *effect* of the payments had been *counteracted by new loans*, not communicated to me,—leaving it to Mr. Lowell to explain how the fact was, and suggesting, meanwhile, *my own inference*, from the transfer of

twenty-one shares by Mr. Sturgis to Mr. Lowell, that *new advances must have been made.*

Mr. Lowell next says :—

“Had Mr. Brooks known or remembered (as the case may be,) that Mr. Boott’s debt to me, after January, 1834, was \$46,000, and not \$25,000, as he alleges, he would have spared me the pain of refuting the following imputation on the memory of Mr. Boott.” [L. p. 97.]

He then cites, from my pamphlet, a portion of the passage, which I have cited above, as containing the imputation.

Having, thus, led his readers to believe that I had charged Mr. Boott with a wilful deception, which I never did, and having artfully connected that assumed charge with my mistake in supposing that the proceeds of the store had gone towards the payment of the Sturgis debt, and having magnified that mistake, which was wholly immaterial to the point I was aiming at, into a matter of grave importance, and having suggested, as part of the same mistake, that, which was no mistake at all, concerning the application of dividends, he remarks, in the language before cited, duly emphasized with capitals, and a note of admiration, upon the cruelty of my imputation, “when the *truth* comes to be told,” which is, (according to the “Reply,”) that Mr. Boott had reduced the debt due to him, Mr. Lowell, \$26,000 during the thirteen years spoken of. Having announced this remarkable truth as something entirely repugnant to my statements, he winds up as follows :—

“On such unsubstantial speculations is this *whole matter* of impeachment based ; carefully investigated they *all* vanish,

‘And like the baseless fabric of a vision,
Leave not a rack behind.’” [L. p. 97.]

Thus the matter is left, in the “Reply,” as if there had been some great misrepresentation, of cruel import, all growing out of my “unsubstantial speculation” as to the *source*, from which the money came, that paid Mr. Sturgis. Every one of Mr. Lowell’s readers probably believed, on reading those pages, that I had *misrepresented*, either purposely, or by

a careless mistake, *the amount of Mr. Boott's payments*, to the extent of *more than \$20,000!* Whereas I neither mistook, nor misrepresented, the amount, by a single dollar.

Poetry and fiction are apt to go hand in hand; and so they may be found, occasionally, paired, in Mr. Lowell's pages. The matter, which I pointed out as one evidence of mismanagement, was, that, of the \$51,000 of debts, for which the shares were pledged by the executor in May, 1831, \$26,000, only, had been paid off, prior to the account of 1844; namely, the whole \$21,000 due to Mr. Sturgis, and \$5000 only of the debt to Mr. Lowell, and that the balance of the debt to Mr. Lowell, was, at the date of that account, left still unpaid; notwithstanding that, during those thirteen years, there had been an average income, from the property held by or under Mr. Boott, of between \$12,000 and \$13,000 a year; and notwithstanding a payment, through me, to Mr. Boott, within the first three years of that series, of over \$10,000, expressly to be applied to the "*note to Mr. Lowell.*" Now Mr. Lowell confirms this statement of facts in every material particular; and yet he says **THE TRUTH IS**, that Mr. Boott, in that time, "reduced his *debt to me* [Mr. Lowell] \$26,000."

But what is, here, meant by "*his debt to me?*" The debt, *I* was speaking of, as *not* paid or reduced beyond \$5000, was the *original \$30,000 note*, for which the pledge by Mr. Boott, *as executor*, was made to *Mr. Lowell*, under the agreement with me of May, 1831. But, says Mr. Lowell, in effect, "About the time of the payment of the \$5000, which reduced the principal of that note to \$25,000, I purchased, by a new advance, unknown to you, Mr. Boott's debt to Mr. Sturgis, and thereby the whole debt due to me, notwithstanding the \$5000 payment, became \$46,000; and it so stood till after January, 1834." Indeed! How does that alter the case?—"Why," says Mr. Lowell, "it shows, contrary to your false and cruel imputation, that Mr. Boott, during those thirteen years, *had paid on account of MY DEBT*, in the whole, \$26,000, instead of only \$5000, as you pretend."—"But," I ask, "did I not say, that he had *paid* the *Sturgis* debt of \$21,000 *in full*, as well as \$5000 of the original debt to

you? Is not that *the whole \$26,000 you speak of?*"—"Yes, but you did not say that he had paid that \$26,000 *to me*;—and this was a false and cruel imputation!"

Now what is all this but a small prevarication, designed to mislead easy readers, and to make a false show of misrepresentation and injustice on my part? Neither Mr. Lowell, nor Mr. Boott, having ever told me of Mr. Lowell's being the owner of a *new* debt, I paid money to Mr. Boott, from time to time, and took his receipts, on the faith that they should be applied to the reduction,—not of *any* debt he might owe to Mr. Lowell, but—of *the* debt, for which certain shares, belonging to his father's estate, had been pledged to *Mr. Lowell*, under an agreement with me. This does not rest on my memory alone. Mr. Boott's written receipts prove it; for, although they do, in *two* instances, speak, *generally*, of "my debt to John A. Lowell," in *eight* instances they describe it, definitely, as "my note to John A. Lowell," (meaning the \$30,000 note, which was the only note, and the only debt, *to him*, that I knew of,) and in *one* instance, when a small sum in my hands appears to have been needed to keep down *interest*, the distinction is taken, between the *note to Mr. Lowell* and the *note to Mr. Cushing*, the receipt being, expressly, "towards paying the *interest*, on my *notes* to J. P. Cushing and J. A. Lowell,"—as if they were still *distinct debts*, and held by distinct parties; although it now appears, by the "Reply," that *both* were, in fact, held by Mr. Lowell, unknown to me. [See the Receipts, B. App. 26–8.]

If I had been misled, then, into an erroneous statement on this point, whose would be the fault? But the substance of my statement was absolutely correct; the moneys did *not* reduce *that* debt, which I was given to understand they should reduce, and of which I was speaking, namely, the "*note to John A. Lowell.*" They did not reduce *that* debt, not because Mr. Boott was guilty of any dereliction of duty in omitting to pay over the moneys to Mr. Lowell, but *because Mr. Lowell chose to apply them to a different debt*, namely, the "*note to J. P. Cushing,*" then held by Mr.

Lowell, as assignee, without my knowledge. He chose to apply them to a *new loan*, which he had made to Mr. Boott, instead of the old loan, which I meant should be paid off; and although I suggested that new loans must have been made, to account for the non-reduction of the old one, Mr. Lowell, availing himself of his own misapplication of the money, and concealment of the fact, now turns round upon me, and declares, that, "when the *truth* comes to be told," it differs from my statement by \$21,000; and, although the \$21,000, which he refers to, is exactly the same \$21,000, which I had said was paid by Mr. Boott to *Mr. Sturgis himself*, as I supposed, instead of his *unknown assignee*, Mr. Lowell, that gentleman does not hesitate to charge me, on this state of facts, with a *false imputation*, entirely of his own making.

Thus much for scrupulous adhesion to the absolute truth!

I would add, that all the payments made, out of the trust moneys in my hands, either to Mr. Boott, or to Mr. Lowell, for the reduction of the debt to the latter, were founded upon the supposition, (Mr. Boott's, as well as mine,) that he owed only \$20,000 to his wards. Had I known that the debt to them, in 1830, was, as now appears, \$46,000, I should never have consented to the diversion of a dollar for the payment of Mr. Lowell; since all the property put into my hands was upon the trust, *first* to secure the guardianship debt, and, *secondly*, to deliver the property to the order of *the executor*, as such, for the security of his father's estate. [See Dec. of Trust, B. App. p. 23.] The payments made to Mr. Lowell, since they were intended to relieve the estate's shares from the incumbrance of the debt due to him, were consistent with the second object of my trust, and still left an ample fund to meet a debt, on the guardianship accounts, of \$20,000, which was understood to satisfy the first object of my trust; but the whole trust property in my hands was insufficient to pay a debt of \$46,000.

It may be worth while to inquire, in this connexion, how Mr. Lowell's *lien* stood in 1844, since its existence, at the time of the final transfer, in that year, of the seventy-one

shares by Mr. Lowell to Mr. Boott, as executor, is said to have made that transfer, in effect, a conveyance to the estate, of precisely \$25,000 more of property than it was entitled to receive; and so (according to the argument,) justified Mr. Boott in claiming thus much of the property as his own, in consequence, and by the operation, of my agreement with Mr. Lowell, in May, 1831.

Now Mr. Lowell's lien, under that agreement, related only to the fifty shares then pledged to him by Mr. Boott, as executor, for \$30,000; and Mr. Boott was permitted to create such a lien, *as executor*, only because Mr. Lowell had made the loan, four years before, on a pledge of those same shares as Mr. Boott's private property, and, as I supposed in 1831, without cause of suspicion that they justly belonged to the estate of Mr. Boott, senior.

Had it been supposed, in 1831, that Mr. Lowell, when he made the loan, in 1827, knew, or had probable cause to believe, that the shares were not Mr. J. Wright Boott's own private property, his lien would have been esteemed of no validity, and he would have been compelled to surrender the shares to the estate. On the same principle, the true state of the case having been disclosed to Mr. Lowell, in May, 1831, no new loan could, *afterwards*, be tacked on to that debt, *so as to bind the estate* by a further incumbrance of the estate's shares, without the consent of all parties interested.

It now appears, however, that Mr. Lowell did, afterwards, make a new advance, for Mr. Boott, of \$21,000, and that he received a further pledge of twenty-one other shares, by a transfer at that time from Mr. Sturgis, on Mr. Boott's order; that his claim, from the beginning, on Mr. Boott was thereby raised to \$51,000; that prior to 1844, \$26,000, in the whole, had been paid to him, and that he then claimed to hold the *whole* seventy-one shares, which were in his hands, as security for the *balance* of his debt, being \$25,000; and he now claims to have had, in 1844, in consequence of his agreement with me, in 1831, a *lien* to that extent, on these shares, when

he transferred them to the estate, at the time of the presentation of the probate account.

Let us look into this. Had he any such lien, *as against the estate*, on the twenty-one shares transferred to him by Mr. Sturgis? Mr. Sturgis had such a lien upon them, at least as against me, because it was agreed by me, acting for all concerned, that he should have,—he consenting, and Mr. Boott consenting, that the shares should be, nevertheless, *marked* as property of the estate. Could Mr. Lowell, *knowing this*, (for he helped to make the arrangement with Mr. Sturgis,) afterwards take those shares from Mr. Sturgis, *divested of that mark*, without the consent of any party interested, except Mr. Boott, and then claim a lien upon them, *against the estate*, in consequence of his own voluntary advance for Mr. Boott? Would he not have been compellable, by a new administrator, to relinquish the shares, and to look to Mr. Boott for his money, when he knew, at the time he made that advance, that it was to meet a private debt of Mr. Boott to Mr. Sturgis, and that the shares pledged for it were the property of the estate?

Certainly he could not claim, on account of this \$21,000 so advanced, a lien upon the *fifty* shares, which he *previously* held; for, in respect to them, this was an entire *new loan*, made with full knowledge that the shares were not Mr. Boott's property, and so made without the consent, or knowledge, of the heirs. Neither could he rightfully apply, to the repayment of that \$21,000, moneys, which, by contract between Mr. Boott and me, were specifically appropriated towards the payment of the \$30,000 note. This appropriation Mr. Lowell could not have been ignorant of, since he knew that he had never disclosed to me the fact that he was the holder of any other claim against Mr. Boott. It is possible that the estate may have been no loser, by these transactions; but, whether it was or not, if we come to the *strict right of lien*, as against the estate, (on which Mr. Lowell professes to stand,) it would seem that he was bound to apply the moneys, strictly, according to the specific appro-

priation, and that his lien must have been thereby reduced, to \$15,000, at most, instead of \$25,000, as he claims.

If there were, besides the advance of this \$21,000 to Mr. Sturgis, other accommodations from Mr. Lowell to Mr. Boott, during the thirteen years, as I believe would appear by his accounts, it may be questionable whether the effect of all the current transactions between those parties, unknown to any body but themselves, was not to *discharge* the *whole* asserted lien *as against the estate*. Such would seem to be the just and legal effect, if moneys were applied to the repayment of these new loans, which might, otherwise, have gone to the extinction of the particular debt, for which the *fifty* shares of the estate's property were specifically pledged to Mr. Lowell, under the agreement of 1831.

Whether these secret transactions, between Mr. Boott and Mr. Lowell, were beneficial, or injurious, to the interests of the heirs, can not be judged of, until we are made fully acquainted with them; but, at any rate, it would seem that parties interested in the property had a right to judge of that for themselves, and a right to be informed, in order that they might judge, instead of being told, as they are, in effect, by Mr. Lowell,—“Here is the account; you see it makes a balance of \$25,000, in favour of Mr. Boott; I had a lien on the shares for that amount, by your agreement; and, since I transfer them all to the estate, Mr. Boott has a right to pay me my debt out of other property of the estate;* and it is none of your business to know what further loans I may have made to Mr. Boott on the strength of these shares, or what moneys I received from time to time, or how I chose to apply them.”

It was, doubtless, convenient to Mr. Lowell to apply the moneys, first, to those advances, for which he had the least, or the most doubtful, security; but whether he had a right to look to the estate, or was bound to look only to Mr. Boott, for the payment of his final balance, to the extent claimed, or any part of it, may depend upon transactions,

*It was in fact paid, it will be remembered, out of the proceeds of the mansion-house.

which he has not yet fully disclosed ; and which, so far as disclosed, indicate that he had no right to look to the estate's property for more than \$15,000, at most ; since his original \$30,000 debt would have been reduced to that sum, had he applied the moneys, which came from me, according to their specific appropriation.

Had the whole \$26,000, of which he admits the receipt, been applied to the original debt, it would have been reduced to \$4000 ; and that would have been the utmost extent of his lien, by virtue of the agreement with me, on any property of the estate. For the additional \$21,000, which was due to him in 1844, to what could he have looked, except to the personal responsibility of Mr. Boott ?

CHAPTER XXXVII.

PRETENDED IMPREGNABILITY OF MR. BOOTT'S POSITION UNDER THE RELEASE OF 1833.

I now return to the narrative. The next event, which materially affected Mr. Boott's position, was the release of April 14, 1833, signed by all the heirs except Dr. Boott, who was in London, and Messrs. Lyman and Ralston, who, in the settlement of 1831, had already released and assigned to Mr. Boott all claims, present and reversionary.

The release was in these words :—

“The undersigned, heirs at law of the late Kirk Boott, of Boston, Esquire, do hereby exonerate and discharge John W. Boott, executor of the last will and testament of Kirk Boott, from all claims and demands in his capacity of executor as aforesaid.” [B. App. p. 28.]

This paper, I formerly mentioned, was drawn up by me. It released Mr. Boott, undoubtedly, from all his indebtedness to

the heirs who signed it, for moneys, whatever they were; then due and payable by him as executor. The probable amount of that indebtedness will presently be considered. In my view it was a considerable sum ; and, for that reason, I speak of the paper as materially affecting Mr. Boott's position. But, however important it may have been to Mr. Boott, it is quite unimportant to the present discussion, since the "Reply" insists, as before shown, that the account of 1844 was intended to be, and is, a complete account of all moneys received and paid by Mr. Boott, in the management of his father's estate, and of all that he was in any way accountable for, without regard to the release. I should take no other notice, therefore, of the release than to remind my readers of the circumstances, under which it was given, were I not called upon to answer some of Mr. Lowell's comments concerning it.

"The intention," he admits, "certainly was to discharge him [Mr. Boott] only so far as the property *beyond* the amount of the trust fund was concerned." But he thinks it doubtful, at least, whether the language is not broad enough to have discharged him in law, from all liability for the property of *the trust fund itself*, meaning the fund for Mrs. Boott. "This," he remarks, "was, to say the least, exceedingly careless ; with a man of honor, like Mr. Boott, no risk was incurred by this phraseology ; it hardly behoves Mr. Brooks, however, to be too severe on mere errors of form." [L. p. 83-4.]

The foundation of this imputation of exceeding carelessness seems to be an idea, that I had supposed Mr. Boott not to be discharged from his liability for the trust fund, merely because the paper speaks of claims and demands upon him *as executor*, and does not speak of claims and demands upon him *as trustee*. Mr. Lowell appears to have formed that idea from this expression of mine : "His *present* liability, *as executor*, was discharged ; his responsibilities, present or future, *as trustee*, were untouched ;" [B. p. 46.] and he thereupon suggests, truly enough, that, although Mr. Boott might, if he had pleased, have filed a trustee's bond, and, under that, might have opened a new account at the probate office for this fund, distinctly,

under the name of *trustee*, yet, that he had, in fact, never done so, and therefore still held the fund in his capacity of *executor*, and under his executor's bond, though acting in the character of a special trustee. It is for this reason that Mr. Lowell appears to consider a release of all claims and demands against Mr. Boott, as *executor*, adequate to have discharged him from all liability for account of the trust fund. This is another of Mr. Lowell's mistakes. There was none on my part, I believe, either in the form or the effect of the paper; although my remark upon it, above cited, may have been liable to the misconstruction Mr. Lowell has put upon it.

The true reason, why I considered this release to be no discharge from liability for the particular \$100,000 trust fund, (which I had chiefly in mind,) was,—not because I supposed it to be held by Mr. Boott in his capacity of trustee, as something legally distinct from his capacity of executor, but—simply because there were no claims or demands of the heirs, *upon that fund*, then existing. If Mr. Lowell consults his counsel, they will tell him, that a mere general release cannot operate, prospectively, on *future* rights and claims. It discharges nothing but the immediate existing liability. The heirs *could* not have any claim, or demand, against Mr. Boott, either as executor, or as *trustee*, for the \$100,000 trust fund, *until* the death of Mrs. Boott. There is not the least room, therefore, for the doubt suggested by Mr. Lowell, for the purpose of imputing carelessness to me. If the object had been to extinguish Mr. Boott's *future* liability to the heirs, for their respective portions of the trust fund, *words of assignment*, to him, would have been necessary, (like those in the deed from Messrs. Lyman & Ralston,) which this paper does not contain. He remained, after its execution, just as he did before, subject to account, at the death of Mrs. Boott, to the legal owners of the reversion, whoever they might then be.

And so, in respect to the two other particular funds, of which the income was to go to his aunts, during their lives; if they were living, at the date of the release, he was not discharged of the liability, which would arise at their respective deaths, to account with the heirs for those sums. I have

ascertained, however, since my former pamphlet, that one of them was then dead; the other not; so that the release might have operated in respect to one of those funds, but not in respect to the other; and, thus far, there may have been a degree of inaccuracy in my former remark, but none, that I perceive, in the form of the paper.

Mr. Boott's exact position, as to accountability, all round, after the release of 1833, was this:—Dr. Francis Boott had given him no discharge, general or particular, to my knowledge, although he had received a sum, which may have been his full portion of the estate distributable in the lifetime of the annuitants. Messrs. Lyman and Ralston, and their wives, had, by their assignment of September, 1831, discharged him from all accountability to them, present or future, for any thing beyond what they had previously received, and beyond what was virtually paid to them by the terms of that settlement. The other parties, who signed the release of 1833, discharged him from all that was *then due and payable*, beyond the sums they had already respectively received,—some more, and some less, as I supposed, at the time, and still do,—but they held him accountable, at a future day, for the amount of such trust funds as were not presently distributable; and he was bound, of course, to clear off from those trust funds, all the private incumbrances, which he had laid upon them, so as to be able to pay to the heirs, in full, their respective shares, when they should become due.

Mr. Lowell afterwards remarks:—

“He [Mr. Boott] had nothing therefore to do, when summoned to render his accounts, but to exhibit this discharge, and show his investment of the trust funds, and his mother's acknowledgement that she had received or authorized the expenditure of the income. His position would have been thus *perfectly impregnable*.” [L. p. 206.]

Now waiving, for the present, all question about the application of the income, I desire to inquire how it would have been *possible*, if Mr. Boott had stated an account on this principle, and *had made good the trust fund*, for *Mr. Lowell to have got his \$25,000?* Mr. Boot's position, if the *trust fund* had been made whole, might have been impregnable, if you

please ; but what would have been *Mr. Lowell's* position, in respect to the payment of his debt ?

The reader must have observed that the great ingenuity of the present account consists in this : that it provides, by an apparent cash balance of \$25,000 due to the executor, for the payment of the debt to Mr. Lowell, in full, while it leaves property enough, at the valuation assumed, to make Mrs. Boott's trust fund pretty nearly whole, and at the same time conceals, from casual observers, the fact, that there is, after all, a deficiency in that. But how could Mr. Lowell, *after providing for his own payment in full*, have prepared, in 1844, an account for Mr. Boott, founded on this release of 1833, that would have been one whit better for Mr. Boott, or rather that would not have been infinitely worse for him, than the account, which Mr. Lowell did prepare, in 1844?—an account, by the way, which never could have been passed, in the probate court, but by the consent of the heirs, under the compromise that was made.

The account, supposed to be so impregnable, is to begin in 1833, and must begin, as Mr. Lowell admits, with the amount of the then undistributable trust funds, invested, as trustee, or as executor, in something. That amount,—one of the aunts being then alive,—was \$105,555 56. When, how, and in what this sum had been invested, was the very first matter to be proved. It must have appeared upon inquiry, at a probate hearing, that the original distinct investment as executor, stated by the probate account of 1818, had been broken up ; that the funds proceeding from it had gone, partly at least, into the hands of Boott & Lowell, and had, wholly, been mixed and amalgamated with Mr. Boott's own funds, undistinguishably, until the reconstruction of a trust fund by the transactions of May, 1831. The investment of the requisite sum *at that time*, and according to the *prices* of that time, must then have been shown ; because the heirs had a right, and not Mr. Boott, to any gain from *rise in value* of the investment ; just as they, and not he, must have borne any loss from its fall in value. Such gain, if there were any, would have become a part of the trust fund ; and the release of 1833

would not have affected that. Being thus, necessarily, referred to the value, which the property, marked for the estate, had in May, 1831, how was Mr. Boott to show a clear trust investment, subsisting, in 1833, and thence to 1844, of \$105,555 56, or even of Mrs. Boott's \$100,000?

He had not, in 1833, a single piece of property standing in his name as executor, except twenty-one shares of Merrimack stock, which had been released to him by Mr. Sturgis, in November, 1831, and the stable. All the rest was held, either by Mr. Lowell, in pledge for a debt of at least \$46,000, or by me in trust for the debt on the guardianship account. It is true, that, in 1844, when it is supposed that the impregnable account might have been made up, both the guardianship debt, and \$21,000 of the debt to Mr. Lowell, had been paid off,—out of what means we shall presently see; but, still, it was impossible for Mr. Boott to show a clear investment of \$105,000 and upwards, made previous to 1833, and remaining clear in 1844. All he could show of remaining property, in 1844, was the stable, the seventy-one shares of Merrimack, and the thirty-nine shares of Boston Manufacturing Company, which are mentioned in the account actually rendered. These he was bound to charge at their value in 1831, when they first became a specific investment for the estate; and he could not even produce the certificates of those shares, except upon paying the balance due to Mr. Lowell, unless Mr. Lowell were willing to give them up, voluntarily, and gratuitously. Having no other means to pay that debt, he must either have credited the estate with the equity of redemption, only, in the shares, which were pledged to Mr. Lowell, (or, in other words, must have charged his debt to Mr. Lowell directly and openly upon the estate,) or else, if Mr. Lowell were willing to waive his lien, and surrender the shares to Mr. Boott, as executor, so that he might produce the proper evidence of his investment, the debt to Mr. Lowell must have been left unpaid, and without any security for it, except the security of Mr. Boott's reversionary interest, which would be unavailable until his mother's death.

This is easily seen by appealing once more to figures:—

71 shares of Merrimack, at \$1160, (the market price of 1831,) are	\$82,360 00
39 shares of Boston, at \$700, (the market price of 1831,) are	27,300 00
	<hr/>
	109,660 00
Stable, if valued at what it produced in 1844,	1,500 00
	<hr/>
Total property, at the value of 1831, if clear of incum- brance,	111,160 00
Balance of debt, due to Mr. Lowell, \$25,000, but which, by the rise of stock in 1844, might have been paid off by shares, worth, in 1831, about	23,000 00
	<hr/>
Balance of property left for the trust funds, Deficiency,	88,160 00
	17,395 56
	<hr/>
Required amount of trust funds,	105,555 56
	<hr/>
Or, total property as above, at the valuation of 1831, Take out the required trust funds,	111,160 00
	105,555 56
	<hr/>
Left, to go towards Mr. Lowell's debt, property worth, in 1831, only	5,604 44
And worth, by the advance of 1844, less than	6,200 00
	<hr/>

In short, upon that principle, and that valuation, either the trust fund, or the fund to pay Mr. Lowell, must have been deficient, by from \$17,000 to \$19,000.

But the fact of a deficiency does not depend on that valuation. A different one might have reduced it; but *no valuation, that could plausibly have been contended for, would have been adequate to cover and extinguish it.*

Shall we choose the fair *average market value* of these two stocks, taken together? That, for a series of years, is not above their original par of \$1000 per share. From 1831 to the present time, the Merrimack stock has seldom been more than thirty per cent. above par; it has sometimes been very much below par; the stock of the Boston Manufacturing Company has seldom been at a less discount than thirty per cent. from the original par, and has often been considerably lower. The average market value of the seventy-one shares of Merrimack, probably, would not exceed \$82,000, which is more than fifteen per cent. advance; that

of the thirty-nine shares of Boston certainly would not reach \$29,300, which is \$700 a share ; and these prices would place the average of the two together at less than \$1000 per share. Taking them, however at \$1000, as a full average, the stocks, with the stable added, at \$1500, amount to \$111,500.* But the debt to the trust fund (\$105,555 56) and the balance of Mr. Lowell's debt (\$25,000) amount, together, to \$130,555 56 ; that is, they exceed the property, taking the stocks *at par*, by nearly \$20,000.

Shall we, then take the stocks at the *actual market value of April, 1833*? the date, at which the impregnable account is supposed to begin. That would proceed upon the theory that the executor was, then, to turn out \$100,000, in cash, or its equivalent at that day. But, upon that valuation, we shall find the whole property (stable included) amounts to less than \$100,000, and the deficiency, of course, mounts up to more than \$30,000.†

Shall we come, then, to the *market value of November, 1844*? when the supposed account was to be rendered, and when manufacturing stocks ruled high. If so, we find these shares, then, actually appraised at twenty-eight per cent. advance for Merrimacks, and \$725 per share for the Boston Manufacturing Company. [See the inventory returned by C. G. Loring, trustee, B. App. p. 55.] This high valuation brings the whole property, (stable included,) up to \$120,655, — a great improvement, but still about \$10,000 short of the required amount.

There have been times, within the period from 1831 to 1844, when the property, at its market price, would have been

* 71 shares,	-	-	\$71,000
39 "	-	-	39,000
Stable,	-	-	1,500
			<hr/> 111,500

† I have found no record of sales in the month of *April, 1833*; but in the month of *March*, Merrimack shares were sold at less than 95 per cent.; and, in the month of *June*, Boston shares were sold at \$700. In April, the latter were probably not worth more than \$650. Taking the Merrimacks, however, at par, and the Boston at \$700, and the stable at \$1500, (all excessive valuations for April, 1831,) the total is \$99,800.

greatly below either of the above valuations; none, I believe, when the two stocks, together, would have risen above the highest of them. At the very time of my writing, the whole property is not saleable for more than \$110,000. Of course, if Mr. Lowell's debt were now to be taken out of it, the balance would fail, by \$20,000, to make good the required amount of the trust funds in 1833.

But the price, at which a trustee has a right, and is bound, to charge trust property in his account, cannot depend upon these market fluctuations; still less upon the price of the day of his own choosing, at which he may please to render and settle a probate account. That would be accounting upon no principle at all. There can be but one alternative. We must either take the fair market value of the property, at the time it was first turned over to the trust account, (and this I submit is the only sound principle,) or we must assume, with Mr. Lowell, the right of a trustee to charge the property to his trust at its actual cost to him, as an individual, when he first purchased it, though in his own name, and, apparently, for his own use.

The latter is the principle adopted in the actual account of 1844; and it so happens, that this valuation, selected by Mr. Lowell, makes a *nearer approximation* to the requisite amount than even the high market prices of that day. They, as we have seen, produced an aggregate value of \$120,655. The alleged *cost* to Mr. Boott, though it puts Merrimack at par, brings up the shares of the Boston Manufacturing Company in part to \$1150, and in part to \$1300, per share, and the stable to \$2500, making an aggregate of \$121,500. [See the account, B. App. p. 44. and L. p. 39.] But the trust fund and Mr. Lowell's debt require \$130,555 56. There is still a deficiency of more than \$9000.

How was this to be got rid of, upon an account starting in 1833? Why, in no other manner, nor to any greater extent, than it is got rid of by the actual account of 1844. That is, only by sinking the \$5555 56, which formed part of the required trust fund in 1833, (although it is not pretended that any thing had ever been divided among the heirs

*after that date,) and calling the whole trust fund \$100,000 only, being that, which was still requisite, in 1844, for the support of Mrs. Boott. The effect is, to diminish the apparent deficiency to about \$3500,—below which it could by no possibility be reduced, even granting Mr. Lowell's tacit assumption that *both* the aunts had died before the release of 1833, and his avowed assumption that Mr. Boott had a right to charge these properties at their original cost to him.*

Instead of Mr. Boott's position being more impregnable, then, with an account founded upon the release, than with the account actually exhibited, there would have been, if Mr. Lowell's debt is to be provided for in full, (admitting the trust funds for the aunts to be wholly sunk and shut out of sight, and admitting the most favourable valuation possible of the property,) just about the same deficiency, in Mrs. Boott's \$100,000 trust fund, as exists in the account of 1844.* But there would also have been this very unpleasant difference. The deficiency must have been perfectly *plain* and *palpable on the face of the supposititious account*, and there would not have been the same *shadow* of an excuse for it as is created by the account of 1844.

No man, who looks at that account, would ever guess, unless after a most careful and analytical investigation, that there was *any* deficiency in the \$100,000 fund. Mr. Lowell taunts me for not having better understood its mysterious and tacit annunciations, "after passing," as he says, "months in their analysis, aided by Mr. William Boott, and by two of the ablest lawyers in Boston." [L. p. 37.] He seems to think it rather an act of cleverness in accounts, to have stated one, which was to be the foundation of a family settlement, in such form, that nobody would be likely to perceive, upon an ordinary examination, what it really meant. And when he finds me misled, by my reliance on its first apparent meaning, into a mistake, which he admits was "an innocent and not very unnatural one," [L. p. 43.] he appears

* In that it is \$3715 45. [L. p. 40.]

to rejoice in the opportunity of exhibiting (by an analysis, which I admit to be entirely correct, though far from obvious,) a demonstration of the fact, that, in consequence of over-payment to the heirs, if the cash entries on each side are admitted to be true and complete, there was, after all, a deficiency in Mrs. Boott's trust fund, (Mr. Lowell's own debt being first provided for,) of \$3715 45. [L. pp. 40, 41.) Yet, the curiosity of the thing is, that neither the fact that there is such a deficiency, nor the fact that Mr. Lowell's debt is to be paid out of the property of the estate, is suggested by any obvious statement on the *face* of that account. I ask the reader to look at it, and he cannot fail to look with admiration at a most ingenious contrivance. A certain inventory is charged, certain alleged receipts of money are charged, and certain payments of money and deliveries of specific property, mentioned in the inventory, are credited, all prior to the release of 1833. They result in leaving an apparent balance, to be accounted for, (including the mansion-house,) of \$120,284 55
 and then property (including the
 mansion-house,) is stated, as held
 by the executor, to the amount of 145,500 00
 "less *cash balance due to the exec-*
utor" 25,215 45
 _____ 120,284 55

Thus, without saying one word about the amount supposed to be on hand for the trust fund, or about any debt to Mr. Lowell, which is to be paid out of the property, the account stands exactly balanced by a certain sum, apparently, due to the executor. This sum we find to be just a fraction more than sufficient to pay Mr. Lowell; and, when deducted from the aggregate of the property, at the valuation assumed, (the mansion-house, which had nothing to do with the executor's account, being also deducted,) the subtraction is found to leave a second sum, which, when compared with other sums, debited and credited in the account, and also with the \$100,000 of undisputed trust fund, leads, remotely, to the discovery of a

deficiency of \$3700 in that fund.* A more ingenious mode of hiding the whole truth, under a mass of figures, plausible upon their face, could hardly have been devised, if that had been the very object aimed at. Now I am far from saying that such was Mr. Lowell's intention. I say nothing about his intentions or motives. But I do say, that *such is the fact*, as every one may see for himself, who consults that account, and reads Mr. Lowell's explanations of it.

But how would it have been, if the account had begun, (as Mr. Lowell intimates that he himself recommended to Mr. Boott,) [L. p. 31.] "from the date of the discharge?" Even admitting his erroneous assumption that both the aunts were dead in 1833, and admitting his erroneous assumption that the property held by the executor was rightfully charged at its original cost to Mr. Boott, how would the case then have stood, on the *face* of the account? All matters, which appear in the present account, of a date prior to 1833, it will be observed, are now to be discarded. The account is to *begin* with \$100,000 of trust fund, invested—in what? Some of the same property, of course, which the account now exhibits, (excepting the mansion-house,) charged at its original cost to Mr. Boott.

But the total of that property, (excepting the mansion-house,) so charged, was only	\$121,500
and the greater part of it was subject to Mr. Lowell's alleged lien of	25,000

This would leave for the trust property, and, if that simple form of statement were adopted, it would exhibit, boldly and palpably, the fact of the pledge to Mr. Lowell, and the fact of a deficiency in the trust fund to the amount of	96,500
	3,500

100,000

In other words, it would openly declare that *so much of the trust fund had been taken to pay Mr. Lowell.*

* See Mr. Lowell's own demonstration. [L. p. 40.]

A like amount of deficiency, it is true, is *deducible* from the present account ; but it is not obvious ; and when deduced, with some difficulty, the fact stands coupled with the excuse of an *apparent over-payment to the heirs* of a corresponding amount. But that *excuse* is derived, solely, from those entries, in the present account, which relate to transactions *prior* to the date of the release, and which, therefore, could not be made to appear in an account *beginning* at that date.

Perhaps, after stating the property, which had been transferred of record to the executor, and charging it at \$121,500 Mr. Lowell would have claimed for Mr. Boott, upon the principle he now contends for, a portion of the property, as *belonging to Mr. Boott*, viz.

21,500

\$100,000

This would leave the trust fund, apparently, whole, if we agree to the valuation of the property at \$121,500 ; but, in that case, if he could make out the fact that so much of the property belonged to Mr. Boott, only \$21,500 would have been taken out for the payment of Mr. Lowell's debt, and he could not have been paid *in full*.

The only other mode he *could* have adopted, so far as I can discern, would have been to *select*, first, for the trust fund, that portion of the manufacturing stock, which had cost him *highest*, compared with its real value in 1844. Thus, he might, perhaps, have taken the thirty-nine shares of Boston Manufacturing Company, which originally cost him, as the present account states, \$48,000, and might have added to that fifty-two shares of Merrimack, which had cost him only par, being \$52,000. This would have made the trust fund, *nominally*, whole, and would have left for Mr. Boott, besides the stable, nineteen shares of Merrimack ; and these items of property, according to their market value at the date of the account, would have sufficed to pay Mr. Lowell. But the shares of Boston Manufacturing Company were, then, actually worth about *twenty thousand dollars less* than their original cost to Mr. Boott. The fifty-two shares of Merrimack were worth only about \$14,000 *more* than their cost to Mr. Boott.

The difference would have made a positive loss to the trust fund of \$6000. So that, although Mr. Lowell might, possibly, in that mode, have contrived to pay himself in full, and yet to return into the probate office an account for Mr. Boott, *fair upon its face*, what would that have been but an actual and direct fraud upon the mother, brothers and sisters of the nominal accounting party? They would have been, thereby, provided with a *selection* of property, charged at \$100,000, which was really worth only about \$94,000; and they would have been thus deprived of \$6000, for the mere sake of paying Mr. Lowell in full, rather than paying them in full. Would Mr. Lowell have ventured to advise to this course? Would Mr. Boott have adopted it? And had it been attempted, the question would, at once, have arisen of Mr. Boott's *right* to make so unfair a selection, and of his right to charge these high priced shares to his trust account, at the cost, to himself, of an original purchase in his own private name,—without which, in no form of stating the account, could a tolerable approximation be made to an apparent accounting for the whole trust fund, after deducting, out of the aggregate property, enough to pay Mr. Lowell in full.

Now I do not mean to assert, that all these considerations actually entered into Mr. Lowell's mind, when preparing the account in the form, which he adopted. It may be a mere coincidence, that that form *happens to be the best*, that could possibly have been devised, for the threefold purpose of paying Mr. Lowell in full, encroaching as little as possible, (consistently with his payment in full,) on the trust fund, and hiding the fact, from all common observation, that there is such an encroachment.

Had the account begun, as Mr. Lowell says he at first suggested, with the discharge of 1833, and a statement of the condition of the trust fund at that date, this would, undoubtedly, have been the fair and correct mode of stating and settling the executor's accounts; and, supposing Mr. Lowell's alleged lien upon the stocks to have been unimpeachable, such an account, disclosing that lien, would have been perfectly unexceptionable to the heirs. It would have

shown, after paying Mr. Lowell, a large deficiency in the trust fund, it is true ; but no heir would have hesitated, in my belief, upon our then state of information, either to have sanctioned the payment of Mr. Lowell's debt out of the property, or to have given to Mr. Boott a full discharge from all his liability to the heirs, on account of that deficiency. If Mr. Lowell advised, as he now intimates, to the statement of an account upon that principle, which was the true one, it is difficult to imagine why Mr. Boott, with all the uprightness of intention that I attribute to him, should have been unwilling to adopt it. I find it difficult to reconcile the fact, as stated by Mr. Lowell, with his hypothesis that Mr. Boott was at that time perfectly in his right mind, and possessed of a clear and discriminating judgement, unless I abandon my own idea, that it was *not* his wish and intention to state any other than a *true* account, according to the views, which he then took, clouded, as they were, by an unfortunate hallucination. And if Mr. Boott refused, as Mr. Lowell says he did, to adopt that form of account, and insisted upon taking up the accounts from the beginning of his executorship, notwithstanding the discharge of 1833, how could Mr. Lowell himself have consented to go on, against his own judgement, in making up an account upon the false principle, which, it seems, was finally adopted ? How could he have persuaded himself to take the money of the estate, (\$3700 at least, of the trust fund, upon his own admissions,) which a statement of the account upon that false principle gives him, without insisting that the fact should appear, plainly, on the face of the account, or without at least insisting that it should, in some form, be communicated to the heirs ? Above all, how can he persist, now, in assuring the public, that the account, so stated, is perfectly correct, that the balance claimed for Mr. Boott is a real one, and that nothing but Mr. Boott's private property was ever appropriated to the payment of his debts ?

CHAPTER XXXVIII.

FAILURE OF THE "REPLY" TO ESTABLISH MR. BOOTT'S RIGHT
TO CHARGE STOCKS AT PRICES CLAIMED IN THE ACCOUNT.

This asserted right, of charging the thirty-nine shares of Boston Manufacturing Company at their original cost to Mr. Boott, depends, entirely, upon due proof of antecedent facts; namely, that when bought at that price, they were bought specifically for the trust, and that they were not afterwards alienated by the trustee, nor taken to his own account as an individual, but were constantly kept and held for the trust.

Now how does the question stand, between Mr. Lowell and myself, on this point? Having ascertained from the records of the Boston Manufacturing Company, [B. App. p. 32.] that Mr. Boott was, in 1820, an original subscriber, in his own name, for thirty shares of that stock, issued at \$1150; that in 1822 he had purchased six more shares from Dr. Jackson; and that in 1826 he had again purchased twenty-one shares from Mr. Kirk Boott, and finding that, in the account of 1844, eighteen shares, only, were charged at the original subscription price, and twenty-one at \$1300, I ventured to put the following inquiries:—

"With whose funds were the thirty originally bought in 1820, and the six in 1822? Why should the *whole* twenty-one, which were purchased in 1826, be placed to the account of the estate at \$1300, and the remaining *eighteen, only*, be placed there at the cost of the original subscription, when *thirty* shares were purchased at their cost?" [B. p. 119.]

Mr. Lowell's answer is characteristic enough.

"The audacity of this passage defies all competition. Does Mr. Brooks know for whom the thirty shares were subscribed for in 1820? or the price paid for the six shares in 1822? or how the twenty-one shares in 1826 were procured?" [L. p. 69.]

Certainly not. If I had known, I should not have asked. How *should* I know, when all the stocks, whether purchased with trust funds or otherwise, were subscribed for, bought, and held for years, in Mr. Boott's private name? Yet when shares, so bought, held, and dealt with as these were, come to be charged in a trust account, some twenty years after, at two prices, both greatly above, and one nearly double, the then market value, and when they are so charged in an account, which does not show when, or how, or with what funds, they were originally purchased, Mr. Lowell considers it an "*audacity*," which "*defies all competition*," for one of the reversionary owners of the property, simply to *inquire*, why they are so charged.

No, says Mr. Lowell :—

"He knows no one of these points, vital to the issue he has raised. Nor did I, when I put the accounts in form for Mr. Boott from the data furnished by him. But I have since thoroughly investigated the matter, and I will enlighten Mr. Brooks." [L. p. 69.]

Light is precisely what I wanted ; but the information, I get, is this :—

"1. The thirty shares subscribed for by Mr. Boott, in 1820, were appropriated by him at the time as follows: eighteen to his trust fund, four to Mrs. F. Boott, and two to each of his four wards." [L. p. 69.]

In proof of this, an entry is produced from the cash book of Boott & Lowell, under the date of April 1, 1822, by which it appears that a dividend, received on the thirty shares, was distributed in those proportions, between Mr. Boott's mother and the members of the F. Boott family. "There never were, then," concludes Mr. Lowell, "but eighteen shares of the original subscription, that belonged to, or had been purchased with, the funds of his father's estate." [L. p. 70.]

So far all runs smooth and clear. As to the thirty shares of original subscription in 1820, I admit myself answered, at least to a certain extent. It appears, from the manner, in which Mr. Boott treated the dividend, in 1822, that twelve of those shares were *then* regarded by Mr. Boott as belonging to the F. Boott family, and eighteen as belonging to his mother's

trust fund,—none as belonging to himself. But how does this account for his having pledged to Mr. Lowell, in 1827–30, a part at least of these same eighteen shares for his private debt? Did he *then* regard them as belonging to his trust fund? Or had he, in the mean time, taken them to his own account?

2. As to the six shares, bought in 1822, they are shown, by referring to Dr. Jackson's books, to have been bought, from him, at \$1500. "Yet," says Mr. Lowell,—as if it were a merit,—"he does not charge these to the estate?" [L. p. 70.] With good reason; for we are informed, on the very next page, that Mr. Boott, in 1827, *sold* these same shares, with others belonging to his wards, at the same price; for which, reference is made to the books of Boott & Lowell, and also to the books of Mr. John Lowell, Jr., as proofs in Mr. John A. Lowell's possession. That is, by omitting these transactions in his probate account, Mr. Boott treats them as his own. To be sure, this does not prove what *funds were used* in the purchase; and whether *dividends* on these six shares are, or are not, included in the gross sum of \$274,000 and upwards, charged in the account as income, nobody but Mr. Lowell can tell. But, since the shares were bought and sold at the same price, there was, as Mr. Lowell justly remarks, neither gain nor loss on the transaction, and so far I am answered.

3. In respect to the twenty-one shares, derived from Mr. Kirk Boott in 1826, and charged to the trust, in 1844, at \$1300, the account given is, that Mr. J. Wright Boott became entitled to them "in virtue of an arrangement between the Boston and Merrimack Companies, in August, 1823," described as follows:—

"In order to effect a sale of the patent rights of the Boston Manufacturing Company to the Merrimack Manufacturing Company, and a transfer of the machine-shop and of Mr. Moody's services from Waltham to Chelmsford, without any possibility of injury to any one, it was arranged, that every proprietor should buy, or sell, a sufficient number of shares to make him a holder of the same number of shares in each company; and that these exchanges should be effected with a difference of price in favor of the Boston Manufacturing Company

of thirty per cent. This made the shares in the Boston Company, so obtained, cost to the Merrimack proprietors, \$1300 each." [L. p. 70.]

Mr. Lowell adds, in further explanation :—

"This arrangement was made in August, 1823, during Mr. Wright Boott's absence in Europe. Mr. Kirk Boott, having no power to transfer his brother's Merrimack shares, supplied their place by his own, and took the Boston shares in his own name. On settlement with his brother in 1826, he conveyed to him the Boston shares, which had always belonged to him; but took the transfer of Merrimack shares as a sale on his own account, at par." [L. p. 71.]

Now, here, Mr. Lowell's perspicuity, if he means to be perspicuous, fails remarkably. It is impossible to see, from this, that these shares, transferred to Mr. J. Wright Boott, individually, in 1826, and which "had always belonged *to him*," as Mr. Lowell says, since 1823, were intended by him, at the time, to be taken as a specific investment for his trust fund, or that they were ever treated as such before the arrangements of May, 1831.

In the first place, Mr. J. Wright Boott, in August, 1823, when it is said these shares were purchased for him by his brother Kirk, held, in his own name, for whatever private accounts, thirty-six shares of the Boston Manufacturing Company, and fifty-six of the Merrimack Manufacturing Company. This appears by the records of those companies. [B. App. pp. 30, 32.] He wanted therefore *twenty*, only, of the Boston shares, and not *twenty-one*, to equalize his interest. And *whose* interest was *his* interest? *For whom* did he hold the fifty-six shares of Merrimack, which were to be offset by as many shares of the Boston? No mortal, unless it be Mr. Lowell, *can* tell,—and he does *not* tell. Were they *all* looked upon as a specific investment for his trust fund? The Merrimack stock, Mr. Lowell informs us, was *doubled* in 1824; [L. p. 72.] but Mr. Boott's subscription to that new stock was for *forty* shares, not fifty-six. So says the record. [B. App. p. 30.] His *right* of subscription, for *sixteen*, must have been transferred, it would seem, to somebody, the stock being then worth more than par. For whose benefit? Not the estate's surely, or the profit, *not being income*, would, or at least

should, appear distinctly in the probate account. Did the forty *new* shares, then, which he in fact took, and took in his own name, belong to his trust? They certainly would, if forty of the old shares did, since the right to the new stock was merely an incident to the ownership of the old, share for share; and if the trust fund was unable to pay for the new shares, the premium on the right to take them should have come as profit to the estate, and should appear in the probate account. He thus held, in January, 1824, ninety-six Merrimack shares, new and old, all in his own private name. The stock record shows this. He sold, in the same year, sixteen of these shares, as the record shows, [B. App. p. 30.] having previously sold, or transferred, as it seems, his right of subscription to an equal number of the then contemplated new stock.

Mr. Lowell, in order to account for the fact that no profit on such a sale appears in the executor's account, undertakes to tell us for whose account the sixteen shares were sold. He says:—

“Four belonged jointly to himself, Mr. Kirk Boott, and Mr. James Boott, being the residue of their interest as owners of one fourth of the original speculation; the other twelve belonged to Mrs. F. Boott and his wards, and were sold, on the occasion of the stock being doubled, in October, 1824.” (L. p. 72.)

It would seem, according to this, that the fifty-six shares of original subscription to the Merrimack stock, in 1822, must have been regarded by Mr. Boott, though standing in his own name, as a *mixed* interest, belonging partly to his father's estate, partly to Mrs. F. Boott and her children, and partly to a joint private interest of himself and his two brothers. If it became necessary, then, in 1823, to buy twenty shares in the Boston Company at a high price, for the purpose of equalizing interests, represented by him in the two companies, “without any possibility of injury to any one,” [L. p. 70.] how happens it, that *all* those twenty shares, and *one in addition*, should have been taken to the account of his *father's estate* in 1826, when their market value was only about \$900,

instead of \$1300, a share,* and that they should be charged, in 1844, as a specific investment for the estate, at \$1300, (the price of 1823,) although there is nothing to show that they were ever put to the trust account until 1844, when the market value was only \$725, being little more than one half their cost? How happens this, when the interests, to be equalized by the purchase, are now stated *not* to have belonged, *exclusively*, to the estate, but to have been the *mixed property of several parties*?

Another difficulty, which presents itself, is this:—A part of Mr. Lowell's explanation is, that twelve of the Merrimack shares, sold in 1824, belonged to *his wards* and Mrs. F. Boott. [L. p. 72.] Yet no such transaction appears by Mr. Boott's probate accounts with those wards. Each of these guardianship accounts shows a *purchase* of two shares of Merrimack about that time, but *no sale* of the stock at any time.

Again, it appears, not only that the twenty Boston shares, which Mr. J. Wright Boott was bound to purchase in 1823, unless he should prefer to sell twenty of his Merrimack shares, were changed into twenty-one shares, but that the twenty-one were bought and paid for by his brother Kirk, who transferred in payment, or part payment, for them, it is said, twenty-one of his own shares of Merrimack; [L. p. 71.] that, in 1826, (Mr. Kirk Boott having in the mean time held the Boston shares in his own name for the benefit of his brother,) there was a settlement between the two brothers; that, in and by that settlement, Mr. Kirk Boott's transfer of his own Merrimack shares, made, originally, as an accommodation to his brother, became converted into an actual sale *for his own account*; and that he transferred to Mr. J. Wright Boott, individually, the twenty-one shares of Boston at their original cost of \$1300 a share. That is to say, Mr. Kirk Boott, as the affair was finally settled, *sold* twenty-one shares of Merrimack, *for himself*, in 1823, at par; and, at the same time, *bought* twenty-one shares of Boston, *for his brother Wright*, at \$1300 a share; and Mr. J. Wright Boott, three

* October 14, 1826, ten shares of this stock were sold at 90 $\frac{1}{4}$ per cent.

years after, took those Boston shares to his own private account, (apparently,) at that price, though it was about \$400 a share more than they were then worth, and paid his brother Kirk for them, of course, in some form. There is nothing, in this, that tends to show a transaction for the specific account of the estate.

The case is still further complicated by the fact, that the settlement between the brothers at that period, (March, 1826,) was not confined to this particular dealing in stocks, but embraced a general settlement of their old partnership accounts, with which this transfer of stock appears to have been, in some way, connected. I refer, for this, to Mr. Kirk Boott's letter of Feb. 8, 1826, written in contemplation of the approaching partnership settlement ; [B. App. p. 15.] a settlement, in which the estate had, legally, no interest.

Now I am far from saying that all this *may* not be susceptible of some explanation, consistent with the assumption that Mr. J. Wright Boott intended these twenty-one shares, at the time, specifically for the trust, and that he paid for them out of the trust funds at \$1300 per share, though they were then worth only \$900. All I say is, that no such explanation is yet given ; and that, on this point, Mr. Lowell, if he himself sees what he assumes, has at least failed to "enlighten Mr. Brooks." [L. p. 69.]

"Is it not deplorable," he asks, "to see a gentleman in Mr. Brooks's position, groping about in utter darkness and ignorance, endeavouring to find some excuse for attacking the honor of the living and the dead?" [L. p. 72.] It is, indeed. Whether Mr. Brooks is groping for an "excuse to attack the honor of the living and the dead," or only for means to vindicate his own, is one question, upon which Mr. Lowell and I may differ ; but, I think, all men will agree, that it is, in any case, truly deplorable, to find a person, in my position, obliged to *grope* in "utter darkness and ignorance" concerning facts, of which I have a *right* to be informed, and, which ought to stand in plain day-light on the probate records.

What is my position ? That of a party interested in the settlement of an estate. What was Mr. J. Wright Boott's

position? That of an executor, who had it all in his hands, and was bound to account for it, distinctly and intelligibly. What is the fact? He renders no account of any sort for six and twenty years. And what sort of an account does he render at the end of that time? One, which shows an old and excellent trust investment broken up, and all the stocks comprised in it sold; but does not show what was done with the money, nor establish the slightest visible connexion between the property mentioned as on hand, (the whole of which he holds, in 1844, *nominally* as executor, but really, in part, as the "Reply" tells us, for his own private account,) and that old trust investment, which, in 1818, he certainly held, *entirely*, in the single capacity of executor. The probate account discloses nothing of his intermediate transactions for the estate; but claims, nevertheless, to charge certain stocks, which had stood for years in his private name, and which had been freely pledged for his own debts, at nearly double what they are worth, without showing when they were bought, or for what account, or with whose funds paid for. Without condescending to state the executor's investments, and changes of investment, his account further claims a cash balance of \$25,000 for himself, as constituting a charge upon the property; and this, notwithstanding his former admission of indebtedness to the estate beyond his ability to pay, and notwithstanding the certainty that he neither earned, nor inherited, nor paid to the heirs, one dollar afterwards, by which he could have altered the balance of account.

And what is Mr. Lowell's position in the matter? He represents Mr. Boott; he prepared this account; he maintains that it is correct; he has in his own possession, from various sources, nearly all the evidence, which might throw light on these mysteries; he does not produce it; he drew up the account, whether purposely or carelessly, in its present form of obscurity; he imputes to me the death of Mr. Boott, as occasioned by my unfounded charges of mismanagement in a trust; and he appeals to his own unintelligible account in proof that the charges were unfounded, because of its purporting to show a cash balance due to Mr. Boott. As one answer to this,

I make it apparent, that the account, admitting all its direct statements to be true, does not exhibit facts enough, concerning the executor's transactions, to enable us to see whether such a balance is really due to him or not ; and when I call for information, which the account ought to give, but does not, concerning certain stocks, charged at a high price as a specific investment for the estate, Mr. Lowell explains in part, and mystifies in part, produces certain proofs, and withholds others, equally under his control, and then, having left the question, concerning the most objectionable parcel of the stocks, just as unintelligible as it was at the beginning, he winds up, at last, by entreating his readers to *deplore* that "utter darkness and ignorance," *which he himself has contributed to cause, and which he only has power to dispel!*

C H A P T E R X X X I X .

MORE OF MR. LOWELL'S LIEN. HIS MEANS OF KNOWING THE TRUE OWNERSHIP OF THE STOCKS. STRANGE MISTAKES, OR MISREPRESENTATIONS.

The question, whether these twenty-one Boston shares, of which we have been treating, were specifically purchased for the estate, or not, at the price charged, now appears, from the "Reply," to depend, partly at least, on two unknown facts : 1. Whether, in 1823, *the corresponding number of Merrimack shares belonged, specifically, and exclusively, to the estate,* after all *other* interests, represented by Mr. Boott in the two companies, had been equalized and satisfied : 2. Whether, in the settlement between Messrs. J. Wright Boott and Kirk Boott, in 1826, the said twenty-one Boston shares, though transferred to Mr. J. Wright Boott individually, and not by

the name of executor, or trustee, were, in fact, *paid for out of the specific moneys of the estate.*

Both these facts, if they be facts, it is in Mr. Lowell's power to show. Mr. Boott's subscriptions, in 1822 and 1824, to the Merrimack stock, both old and new, fall within the period of the firm of Boott & Lowell, which lasted from Jan. 1, 1822, to July 1, 1824. [L. pp. 28-9.—B. App. p. 59.] During about one year of this period, Mr. Boott was in Europe, and the management of his private affairs, we are told, was left with Mr. Lowell. [L. p. 28.] The books of that firm are appealed to by him, to prove the true distributive ownership of the thirty shares of Boston stock, purchased in 1820, by proving the distribution of the dividends upon them in April, 1822. [L. p. 69.] Will not the same books show, for whose account, and with whose moneys, the fifty-six shares of Merrimack were originally bought and paid for in April, 1822, and how the subsequent dividends on *them* were distributed? Will not the same books tell us how that stock was privately held in August, 1823, when the arrangement was made between the two companies, which, as is said, led to the purchase of the twenty-one shares of Boston, to equalize the interests? If we knew that, we should most readily see, to whose account, or to what several accounts, the twenty-one shares ought, properly, to have been put at \$1300 a share.

In the next place, Mr. Lowell, as the executor of Mr. J. Wright Boott, must have in his possession the evidence of the *settlement*, he speaks of, between Messrs. Kirk and J. Wright Boott, in March, 1826. [L. p. 71.] If we had the whole of that settlement before us, we should probably see, at once, out of what fund Mr. Kirk Boott was in fact *paid* for the twenty-one shares; and we should probably see other matters, also, quite material to another branch of this inquiry. But none of these things are we given to see, notwithstanding Mr. Lowell's profession is to "enlighten," not only Mr. Brooks, but the public.

As the case stands, the "Reply" has entirely failed to make out the point, that these twenty-one shares were actually

bought as a specific investment for the trust fund, or that the estate was bound to take them, in 1826, at the price of 1823. If not, there was no right to put them to the account of the estate at that price in 1844; but we are necessarily referred, for the price, at which they should have been charged, either to the market value of May, 1831, when they were first visibly transferred to the executor, or to the market value of 1844, when they are first charged to the estate, so far as yet appears, in the probate account.

And here, let us inquire, once more, concerning Mr. Lowell's *lien* on the shares he held in pledge. The foundation of that lien, as he avers, was, that he took them, originally, supposing them to be the private property of Mr. Boott. [L. p. 29.] My agreement with Mr. Lowell, in May, 1831, by which the shares, when transferred to the executor, were repledged by Mr. Boott in that capacity, was founded distinctly on that basis, as Mr. Lowell admits. [L. p. 41.] He says he had not only every reason to suppose them Mr. Boott's at the time of the original loan, but that it was not even intimated by me, in the arrangement of May, 1831, that those shares belonged to the estate. [L. pp. 41-2.] This loan was made in 1827. The pledge covered, originally, eighteen shares of the Boston, and eighteen of the Merrimack stock; seven more shares of each stock were added in 1830, making twenty-five of each stock then under pledge to Mr. Lowell. [B. App. pp. 30—33.] They remained so in May, 1831. Now let us look at Mr. Lowell's means of knowledge of the equitable ownership of these shares, at the time they were thus pledged to him. The inquiry has a material bearing on the question of his interest in the settlement of the account of 1844; and, if the truth was, that his loan to Mr. Boott did not stand on the most unquestionable security, that will be found, when the reader comes to see the whole course of Mr. Lowell's conduct in this business, to be a fact, which tends strongly to "elucidate the matters in controversy."

To begin with the Boston shares. In respect to them, we are told, on the authority of the books of Boott & Lowell, in which, it seems, Mr. Boott's private cash account was kept,

and kept by Mr. Lowell himself, at least during the year of Mr. Boott's absence in Europe, that thirty shares, originally subscribed for by Mr. Boott, in his own name, belonged, eighteen of them, to his mother's trust fund, and twelve to his wards and to Mrs. F. Boott, their mother. [L. p. 69.] We are also told that six other shares were bought, in 1822, from Dr. Jackson, and that these, together with six of the twelve belonging to the wards, and to Mrs. F. Boott, their mother, were sold in Oct. 1827, as it is printed,—but, as I take it, by mistake, for Oct. 1824. [L. p. 71. and see transfers, B. App. p. 32.] Two, of those, which belonged to Mrs. F. Boott, were transferred to her, in 1825, by the name of Mrs. Mary Lee, who was the same person. [L. p. 71.] Mr. Boott, then, after these sales and transfers, had left in his hands only twenty-two shares of this stock, namely, eighteen belonging to the trust fund, and four belonging to his wards,—*none belonging to himself*,—according to Mr. Lowell's own statement and proof, from his own books. In 1826, Mr. Boott acquired the twenty-one shares from Mr. Kirk Boott, which Mr. Lowell has so laboured to prove were a specific investment for his trust. Thus forty-three shares, in all, stood in his name, *every one of them belonging, according to Mr. Lowell, either to the trust fund of his father's estate, or to the trust funds of his wards.* Mr. Lowell, when the pledges were made to him, in 1827 and 1830, was, moreover, himself, the treasurer of the Boston Manufacturing Company. He therefore knew that there were, as its records show, [B. App. p. 32.] no other shares of that stock standing in Mr. Boott's name; and he knew, (since he now tells us,) *for whom* Mr. Boott held these. He may not have positively *known* indeed, *at that time*, what he must otherwise claim to have *since discovered*, namely, that the twenty-one shares, coming from Mr. Kirk Boott in 1826, were bought specifically for the trust fund, since that date was after the dissolution of the firm of Boott & Lowell; but he knew, at least, that those twenty-one were *all* the shares, which *could, by possibility*, be the *private property* of Mr. Boott, if the facts are as Mr. Lowell now states, from the books of Boott & Lowell, concerning the *other twenty-two*.

How is it possible, then, that Mr. Lowell should have supposed *twenty-five* of those shares to be Mr. Boott's private property? Or how could he, with his sentiments of the manifest impropriety of mingling trust funds with the private property of a trustee, and after his earnest remonstrances with Mr. J. Wright Boott on that subject, [L. p. 88.] have consented to take *twenty-five* of those shares in pledge for a private loan to Mr. Boott, perceiving, as he must, if he looked to the matter, that *some* of them, at least, *if not all*, were the property *either* of his mother's trust fund, *or* of his wards.

Next let us look at the Merrimack. All Mr. Boott's shares in that stock, except five, which came from Mr. James Boott in 1826, [B. App. p. 36.] were bought and paid for in the days of Boott & Lowell. Ninety-six Merrimack shares, in all were purchased by Mr. Boott as an original subscriber, in 1822 and 1824; sixteen of them were sold, during the same period, in which Mr. Lowell refers to the books of his firm to prove the sale of the twelve Boston shares; [B. App. p. 30.] and from those books it is, no doubt, that he also undertakes to tell us how twelve of the Merrimack shares were actually owned. [L. p. 72.] Four more of the Merrimack shares were, soon after, transferred to Mrs. Mary Lee, [B. App. p. 30.] making, in all, twenty, which passed out of Mr. Boott's hands. This left seventy-six shares still standing in his name, the ownership of which must have been recorded, it would seem in the books of Boott & Lowell. Five more came from Mr. James Boott in 1826. Respecting the true ownership of these, (the firm of Boott & Lowell being at that time dissolved,) Mr. Lowell may, or may not have had means of knowledge. There were then eighty-one, in all, held by Mr. Boott in 1826. Mr. Lowell has not told us what the books of Boott & Lowell may show as to the original ownership of the seventy-six, which remained from the original subscriptions. But of the whole eighty-one shares, eight were, afterwards, treated by Mr. Boott as belonging to his guardianship accounts ; and the remaining seventy-three were *all* either marked, in May, 1831, as property of his father's estate, or transferred by him, in trust, to

secure his father's estate, including its liability for the guardianship debt ; and of these seventy-three, seventy-one re-appear in the account of 1844, *charged at their original par*, instead of their higher value in 1831, when they were first visibly transferred to the estate. This seems to involve an admission that they were all regarded, *from the beginning*, as a specific investment for the estate. If so, would not the books of Boott & Lowell show it ? Must not Mr. Lowell, the accountant of that house, have known the fact ? Or, if those books prove the fact to be otherwise, would not Mr. Lowell have shown us that ? Had he, then, reason to believe, at the time of the loan and pledge in 1827-30, that Mr. Boott was the clear owner in his own right of *twenty-five* of these shares ? Did he not, at least, know enough to the contrary, respecting both the Merrimack and the Boston stocks, to have put him on inquiry ?

But, some one will ask, how is it possible that Mr. Lowell, if he had cause of doubt on this point, could, as a prudent money lender, have consented to take the risk of lending trust money on this security, and, in effect, of guaranteeing the loan ?

It is not for me to answer this question. It relates entirely to motive. My business is with facts. It is somewhat premature even for the reader to indulge his curiosity in speculating upon motives, until he has seen *all* the facts, which the case may bring before him. I do not even mean to assert that it is a fact, that Mr. Lowell, at the moment of taking these shares, positively knew, or remembered, that they must, in whole or in part, be trust property ;—especially when, respecting Mr. Boott's affairs, he declares, that, in May, 1831, he “knew nothing about them, except from Mr. Brooks himself, and could not, of course, either affirm or deny any representation he [Brooks] might see fit to make on the subject.” [L. p. 30.] But all these are things for Mr. Lowell to explain. The main evidence lies in his own keeping. Certain evidence, only, has come to my knowledge. That I exhibit. It tends, if unexplained, to show that Mr. Lowell, when he took the stocks in pledge, ought to have known how Mr.

Boott stood in relation to them. If he has any evidence to the contrary, I shall be glad to judge it fairly. But, at present, upon such evidence as I see and have shown, I mean only to say, that the taking of *so many* shares of these two stocks, as the private property of Mr. Boott, with Mr. Lowell's *means* of knowledge respecting their true ownership, seems to me to have been a remarkable indiscretion. To borrow his own language, "This was, to say the least, exceedingly careless." [L. p. 84.] And I must say, that, if these circumstances had been known to me in May, 1831, I should never, without some satisfactory explanation, have consented to the preservation, or renewal, of Mr. Lowell's supposed lien, by a transfer from Mr. Boott, *as executor*, which I assented to only from the supposed necessity of the case, and in consequence of my belief that Mr. Lowell had previously taken those shares in pledge, without suspicion, or cause of suspicion, that they were not Mr. Boott's, in equity and law. Neither should I have assented to the compromise, which allowed the account of 1844, whereby I well understood that the estate's property went to pay Mr. Lowell's debt, had I not remained under the same impression as to the origin of the pledge, and had I not, consequently, believed that the estate, receiving the shares, ought to pay the debt.

Whatever may be thought on this point, we are now, necessarily, brought to the conclusion, from Mr. Lowell's own showing, connected with the account of 1844, that the seventy-one shares of Merrimack therein charged at par, and the eighteen shares of Boston charged at their subscription price of \$1150 per share, were regarded by Mr. Boott, originally, as purchased for the estate. Mr. Lowell labours to satisfy us that the twenty-one shares of Boston, purchased in 1826, at \$1300, were also purchased for the estate; although the evidence leaves us in doubt on that point. The stable, which the account says cost \$2500, we are told distinctly, was bought for the benefit of the estate. [L. p. 86.] But how is this? The whole property, now named, amounts, at these prices, to \$121,500, all of which, according to that statement, was, at the time of the purchases, the estate's money;—and yet we

are told, by the account of 1844, that \$25,000 of that property was *then* Mr. Boott's own; and that this did *not* arise from the fact of his having paid out more than he had received, except to the amount of about \$3700!

Leaving these contradictions to be reconciled as well as they may, it is now made certain, that sixty-seven of the Merrimack shares* and twenty-five of the Boston, if purchased originally for the estate, were, afterwards, taken to Mr. Boott's private account, and pledged to Messrs. Sturgis and Lowell for \$51,000 of personal loans to him. The question then recurs, at what price could Mr. Boott, rightfully, have charged those shares, in an account beginning from the discharge of 1833?—at which date the shares stood subject to those pledges. The Merrimack shares were, then, at about par; the Boston at a great depreciation. At the market prices of that day, it has been shown [Ante, p. 380.] that scarcely \$75,000 of property could have been turned out, clear of Mr. Lowell's debt, which was then \$46,000. In 1844, though the Boston shares continued greatly below their original par, the Merrimack shares had attained a considerable advance; but not a sufficient advance to counteract the loss upon the Boston shares, compared with *their original cost* to Mr. Boott. Can he claim to charge them *all*, Boston and Merrimack, at that cost?

Now I believe the rule to be, that, since Mr. Boott had chosen to take both these stocks from the estate, and to treat them as his own, the heirs would have their election, in respect to each parcel of stock, when afterwards offered to be returned to the estate, to reclaim such parcels as they pleased at their original cost, and to take the residue at their market value at the time of the restoration. I think I formerly stated the principle correctly, though Mr. Lowell seems to doubt it, [L. p. 68.] that, when a trustee converts distinct parcels of the trust property to his own use, whatever is gained by rise in value of any one distinct parcel of the prop-

* To Mr. Sturgis, - - - - - 42

To Mr. Lowell, - - - - - 25

erty, while so converted, is gained for the trust, and whatever is lost, by the fall of any other distinct parcel of the property, is the private loss of the trustee, if the parties, to be accounted with, so elect. The gain on the Merrimack stock, on this principle, was a gain for the estate, and the loss, by the depreciation of the Boston stock, Mr. Boott lost for himself, and had no right, unless by consent, to charge upon the estate, by placing the stock there, again, at its original cost. The application of this principle to an account, beginning in 1833, would have been to put the Merrimack shares at par, that being their original cost, and the Boston shares at \$725 each, that being their market value at the time of the making of the account, in 1844. But where would Mr. Boott's "cash balance," and where would Mr. Lowell's debt, have been by that rule? Either Mr. Lowell must have gone wholly unpaid, or the \$100,000 trust fund must have been *minus* by nearly \$25,000.* It would have operated far more unfavourably for Mr. Boott than charging all the stocks, as I have done, at their market value in May, 1831; which left a deficiency of about \$17,000 only. [Ante, p. 379.] That went upon the principle of considering them, though purchased with funds borrowed from the estate, to have been Mr. Boott's own property, so long as they stood, undistinguished, in his own name, and of considering that they became the estate's specific property, when they were first marked as such.

So much for Mr. Lowell's *impregnability*, with an account dating from the discharge!

Mr. Lowell, however, affects to consider that I formerly contended for the principle of charging these stocks to Mr. Boott at their market value, not of 1831, but of 1844; and he professes to proceed, himself, on the principle of discharg-

* 71 shares of Merrimack at par	-	-	-	-	71,000
39 " " Boston at \$725	-	-	-	-	28,725
Stable	-	-	-	-	1,500
					<hr/>
					101,225
Mrs. Boott's trust fund	-	-	-	-	100,000
Debt to Mr. Lowell	-	-	-	-	25,000
					<hr/>
					125,000

ing the executor by crediting the stock, purchased at its *actual cost*. In that view he makes the following statement:—

“Had the opposite principle been adopted, [i. e. crediting the stocks at the market value of 1844,] the result would have been as follows:—The manufacturing stock, as shown by Mr. Boott’s account,

had cost him	\$118,000
The market value of the same shares, as shown by Mr.	
Loring’s inventory, was	119,155
	1,155

That is to say, if Mr. Boott had credited himself with the stock on the principle Mr. Brooks seems to indicate, that is, the market value, the result would have been more favorable to him than it was by \$1,155

As however the stable, which cost him	\$2500
was appraised to Mr. Loring at only	1500
there would have been a deduction of	1000
	155

So that Mr. Brooks’s complaint resolves itself into this, that Mr. Boott has credited the estate with \$155 more than he ought to have done!” (L. p. 67, 68.)

This is another strange instance of misstatement and miscalculation, for a man of immaculate accuracy in such matters.

It is true that the *market value* of the stocks, in 1844, “as shown by Mr. Loring’s inventory,” was as Mr. Lowell states it, \$119,155*

But the *cost* of the same stocks to Mr. Boott, “as shown by Mr. Boott’s account,” (meaning the probate account of Mr. Lowell’s own making,) instead of being \$118,000, as he above states, was \$119,000, which appears as follows:—

“39 shares in the Boston Manufacturing Company;

* The statement of the inventory [B. App. p. 55.] is as follows:—

“Thirty-nine shares in the Boston Manufacturing Company, at \$725 each, \$28,275
Seventy-one shares in the Merrimack Manufacturing Company at \$1280
each, - - - - - 90,880”

These sums, added, amount to - - - - - 119,155

<i>Brought over, market value,</i>	\$119,155
Of 18 shares, cost \$1150 each	\$20,700
21 shares cost \$1300 each	27,300
	<hr/>
	48,000
71 shares in the Merrimack Manufacturing Company cost	71,000
	<hr/>
	119,000

Difference, (instead of 1155,) 155

Difference, (instead of 1155,)

155

Hence, if Mr. Boott had credited himself with the property

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Hence, if Mr. Boott had credited himself with the property at its market value in 1844, instead of its cost, it would have made a difference in his favour, so far as regards the *stock, alone*, of only \$155, instead of \$1155, as Mr. Lowell so triumphantly proclaims. But, unfortunately, this little difference is quite enough to turn the argument the other way; for Mr. Lowell admits, above, that on the principle of market value in 1844, a deduction of \$1000, from the cost of the *stable*, compared with its saleable price, must be offset against the supposed gain of \$1155 in the market value of the stocks, compared with their original cost. *His* statement is: gain to the estate, by charging the stocks at less than their market value, \$1155

\$1155

less loss, by charging the stable at more than its

market value, 1000

Net gain to the estate,

155

But the *true* statement is; loss to the estate, by

charging the stable at more than its market value,

1000

less gain to the estate, by charging the stocks at

less than their market value, 155

155

Net loss to the estate,

845

So that, had my complaint in truth been that, which Mr. Lowell falsely assumes, instead of resolving itself "into this, that Mr. Boott has credited the estate with \$155 more than he ought to have done," it would resolve itself, on Mr. Lowell's

showing, (correcting his misstatement,) into *this*, that Mr. Boott has credited the estate with \$845 *less* than he ought to have done!*

The misfortune, here, is, that Mr. Lowell, in adding up the costs of the stocks, has missed; (or rather *made*,) a figure;—which, though it be but a unit, happens, by position, to amount to \$1000. Or, to put the case more in his own striking way, he has magnified a little result of \$155 by about 750 per cent! A degree of inaccuracy, scarcely worth noticing, perhaps, but for the curiosity of comparing the fact with some of the same gentleman's remarks, when, by another and more extraordinary blunder of his own, he supposed that a sum of \$2500 had grown into one of \$10,000, by being “refracted through the prism of Mr. Brooks's memory!”

[Ante, Ch. 6.]

Now is it not truly wonderful,—would it not be absolutely incredible, if it were not all in plain black and white before us,—that a gentleman, occupying Mr. Lowell's position, should have had the effrontery to publish a book, so arrogant, so self-assuming, so denunciatory, so contemptuous, as this “Reply” is, in temper and tone, pretending to hold me up to absolute ridicule for alleged inaccuracies and errors, which are mostly of its author's own manufacture, while he himself has been guilty of so many, and such, oversights and mistakes as have now been pointed out, descending even to the simplest processes of simple arithmetic? Or, can it be, that he has, really, presumed upon the belief, (a belief, which, I am sorry to say, the event proves to have been tolerably well founded,) that most of his readers would throw themselves, with a confidence amounting to absolute self-abandonment, upon statements of this nature, coming from such authority, provided they were only promulgated with a degree of “audacity,” which “defies

* Cost of stocks, by the account, as above	-	-	\$119,000
“ “ stable, by do.	-	-	2,500
			<hr/>
Total cost, with which the estate is charged,			121,500
Market value of stocks, as by inventory,	-	\$119,155	
“ “ “ stable, by do. -	-	1,500	120,655
			<hr/>
Excess of cost above market value,			845

all competition?" Did he, really, trust to the *chance*, that readers, suspecting nothing, would never, of themselves, detect falsehoods so gross and palpable; and that I should never have the courage "to follow out these misrepresentations, step by step," [L. p. 85.] in the pains-taking method, which their nature requires, for the purpose of exposing them to the apprehension of those, who would not look for themselves? Will the reader be charitable enough to believe, that the author of the "Reply" has, *always*, erred through accident and heedlessness? Or will he suspect that he has ventured to play the desperate game above suggested? Those, who have the patience to read my volume through, will at least have the means of forming an opinion.

CHAPTER XL.

A CHARGE AGAINST ME OF MISREPRESENTATION, OR MISTAKE, IN MATTERS SAID TO HAVE BEEN DECIDED BY THE SUPREME JUDICIAL COURT.

In connexion with the subject of the last chapter, I may properly notice certain comments on a sentence or two in my former pamphlet, deserving, in Mr. Lowell's opinion of "serious animadversion." [L. p. 72.] The passage was this:—

"Among the causes, it should be remembered, which went to bring down the saleable value of shares in the Boston Manufacturing Company from \$1300, in 1826, to \$725, at the date of the rendition of this account, was the fact, that the company had sold off a part of its fixed property, and divided the proceeds, which was a real reduction of capital. Yet this dividend, which really represented capital, stands nowhere in the account, unless it was treated as income, and included in the credit of near \$275,000 paid 'to, or for account and by order of, the widow.'" (B. p. 120.)

Mr. Lowell begins:—

"Here Mr. Brooks is wrong, *as usual*, both in his facts and his law ;" and he, thereupon, proceeds to state, that the extra dividend in question was declared "from the profits arising from making the machinery for the first Merrimack mill, and from a sum of \$75,000, paid to the Boston Company by the Merrimack Company, for the transfer of their patent rights and of Mr. Moody's services." [L. p. 73.]

This transfer is the same, which is said to have been the occasion of the arrangement before mentioned, [Ante, p. 391.] whereby the proprietors in the two companies, with the view of equalizing their interests, exchanged shares at a difference of thirty per cent. in favour of the Boston Manufacturing Company. Reference is then made to the opinion of the Supreme Judicial Court, in the case of Mr. McLean's will, as a decision directly in point. And thereupon Mr. Lowell remarks :—

"This ignorance of a prominent decision of our Supreme Court, as well as the numerous instances of disingenuousness and unfair inferences with which this pamphlet abounds, convince me that its authorship should not be attributed, as is popularly done, to one of the counsel of Mr. Brooks, a gentleman who enjoys the reputation alike of manly fair dealing, and of acuteness and learning in his profession." [L. p. 74.]

This compliment seems not to be intended for me. I might well let it pass, therefore, with an expression of surprise, that Mr. Lowell should commit so vulgar an error as to confound counsel and client, were it not for the illustration, it affords, of his singular tendency to mistake his own assumptions for indisputable facts, even while he is correcting others for alleged errors of the same kind.

In the first place, (though the authorship of a pamphlet has not much to do with its merits,) the truth is, that the original statement of my case was not only wholly written by myself, but actually printed, in proof copies, for the purpose of submitting it to two or three friends for consideration and advice, before a word of it was seen by either of my counsel. With the aid of counsel, it was, afterwards, modified, enlarged, and re-arranged, for the purpose of making my view of the case, more plain and intelligible to persons less familiar with the

facts than Mr. Lowell and myself. But, whatever obligations I may owe to counsel, for amending the imperfections of my original draft, the facts, which I assert, and the inferences, whether fair or unfair, which are unfavourable to Mr. Lowell, and all the "petty insinuations," which he elsewhere complains of, [L. p. 20.] I may safely be permitted to claim as my own.

In the next place, it so happens, that in one of my conferences with counsel, the very decision, mentioned by Mr. Lowell, was particularly cited and referred to. I was, as it happened, not ignorant of that case myself. Being then a member of the bar, I happened to be present when the opinion was delivered, and recollect the considerable sensation, that it occasioned at the time. So much for the assumptions.

Now as to the mistakes. Concerning the details of the actual arrangements between the two companies, in 1823, Mr. Lowell, who was at that time the treasurer of one of them, and a director, I believe, in both, is likely to be better informed than I am. I may have been in error myself, and may have misled my counsel, in stating so broadly, as I did, that the Boston Manufacturing Company "had sold off a part of its *fixed property*, and divided the proceeds;" though, but for an expression of the court, in the course of the opinion referred to, which might seem to intimate otherwise, I should confess myself unable to see, now, why the *ownership of patent rights, affixed to machinery used in manufacturing*, is not as much a part of the *capital*, employed in the business, as the machinery itself.

When the case was referred to, my counsel were not informed of the fact, if it be a fact, that the particular dividend, which I spoke of as a dividend of "fixed property," was the same, or one arising from the same source, with a dividend, which is mentioned, among many other things, in the discussions of that case. The case was looked at, of course, for its legal principles, and not for mere evidence of a particular extrinsic fact, which I stated to be a fact. If I was really mistaken in that, as Mr. Lowell asserts, the reader will presently see that a majority of the stockholders in the Boston Man-

facturing Company, laboured under the same mistake of supposing their capital reduced, and passed a vote founded upon it, which, I believe Mr. Lowell himself recommended.

But, from the manner, in which Mr. Lowell points to the decision of the court, one would think it settled the identical matter, in issue between us. Every lawyer, who examines the case, will see that it does no such thing. One question, among many, it is true, was, whether a certain dividend of the Boston Manufacturing Company, (which Mr. Lowell says is the same I referred to,) was to go to a widow, who had a certain interest in the property, during life, or to a residuary fund, given to Harvard College and the Massachusetts General Hospital, after her decease. That question turned, of course, upon the intention of Mr. McLean, as it was to be gathered from the circumstances, under the language of his will, which, as the court say, speaks of "*profits, income, dividends,*" without exception, as payable to the widow ;* and, accordingly, it is decided, that a special dividend, arising, in part, from the proceeds of a sale of "*patent rights and patterns for castings,*" and "*placed to the account of profit and loss*" by the company,† was rightfully paid to the widow, according to the intention of that will, instead of being kept as an accumulation, for the benefit of the strangers, who were to come after her. But the case, it will be seen, settles no general principle, applicable to all wills and all extra dividends ; and it settles nothing applicable to the case under the will of Mr. Boott, which was all I had to deal with.

The will of Mr. Boott, at first, provided, simply, that \$100,000 should be "*placed out at interest ;*" "*the interest money* on which, as it shall arise, I give to my said wife ;" and (after other provisions, not material to the present point,) "*the residue of the above mentioned property I give to my children.*" [B. App. p. 3.] Afterwards, by a codicil, the executors were authorized to invest the \$100,000 "*in such stocks, or mortgages, as shall appear best to them ;*" and, in that connexion, "*the interest money, as it accrues,*" is again

* 9 Pickering's Reports, p. 458.

† Id. p. 463.

spoken of. [B. App. p. 8.] Not one word, either of the will, or of the codicil, can be deemed to enlarge, or modify, the effect of the language, first used, respecting the distribution of principal and interest between the widow and the children, or to alter their relative rights, further than such alteration of rights must, necessarily, flow from the simple permission, thus given by the codicil, to invest in *stocks*. The question, then, for the lawyers to determine, is, whether, under *this* will, a dividend, *not* of ordinary income, but proceeding from *a sale of property used for the business, out of which the ordinary income had previously, in part, accrued*, was intended by the testator to be classed as "*interest money*," and to be paid, as such, to the widow. I hold not, with all deference to better judgement, when it shall be cited. As yet, nothing has been cited, which touches that question.

It was not my intention, however, in the paragraph, which calls forth Mr. Lowell's "*serious animadversion*," to give an opinion, or provoke a discussion, on an abstract question of law. When I called such a dividend, as I supposed to have been made, "*a real reduction of capital*," I was looking at the matter, as one of common justice and right accounting, with reference to this particular will, and to facts, which, certainly, were not before the court, in the case Mr. Lowell alludes to. Mr. Boott's account does not even show whether the dividend in question has been paid, or credited, to any body. It cannot even be *inferred* that it has, except on the hypothesis that it *may* have been included in the lumping credit of near \$275,000, for "*income paid to, or for account and by order of, the widow*;" and if so, it seemed to me, that, under the provisions of Mr. Boott's will, such a dividend, not being in any sense "*interest money*," nor representing ordinary income, properly belonged to the children, and not to the widow, even on the most liberal construction of Mr. Boott's intention towards his widow. But, besides the marked difference in the two wills, several other important facts, not before the court in the case cited, now appear, which go to show, that the payment of such a dividend to Mrs.

Boott, if it ever was paid to her, caused a substantial reduction of the capital of the trust fund.

The arrangements and transfers of property between the two companies, which consisted mainly of the same individuals, were such, as Mr. Lowell tells us, [L. p. 70.] that, to do complete justice, it was thought necessary, not only that a sum of money should be paid by one corporation to the other, but that shares should be exchanged, by the individual corporators, so as to give to each individual an equal number of shares in each company ; and the stockholder of the Boston Company, who parted with a share of that stock, and received in exchange a share of the Merrimack stock, received with it, in money, thirty per cent. of the par, for difference of value. That thirty per cent., it would seem, was to indemnify the individual, more completely, for the permanent loss he was expected to sustain, as a stockholder of the Boston Manufacturing Company, by the transfer of a profitable branch of its business, together with the property used in that business, to the Merrimack Manufacturing Company. The direct money payment, by one corporation to the other, was but a small part of the consideration for that, which was transferred.

2. The shares of the Boston Manufacturing Company, which had, before, been freely bought and sold at \$1500 a share, [L. pp. 70, 71.] became, thereby, in conjunction with other causes, *permanently reduced in value more than fifty per cent.* These shares fell, immediately after the arrangement, and continued to fall, until, instead of \$1500, the market price has sometimes been as low as five or six hundred dollars a share. A certificate, printed above, [Ante. p. 248.] fixes the price in August, 1830, at \$666 67 ; and in November, 1844, when manufacturing stocks were unusually high, we find them appraised at \$725. [B. App. 55.] Merrimack shares, at the same time, were appraised at \$1280 ; though the original par of each was the same, namely, \$1000.

3. Not only has this permanent change occurred in the *market value*, but, in order to conform to a stubborn fact, the *nominal capital* of the Boston Manufacturing Company was at length, (long after the decision upon Mr. McLean's will,)

cut down, by a formal vote, from \$600,000 to \$450,000; whereby, without any new division of capital, the *nominal par* of a share was reduced from \$1000 to \$750. This fact, which is very notorious, happened while I was myself president of that corporation; and, although I had no such connexion with its affairs, in 1823, as to know, of my own knowledge, precisely, what the arrangements with the Merrimack Manufacturing Company then were, I do know, that, when the above-mentioned reduction of capital was under consideration, several years after, the propriety of such a measure was urged, at the time, by those who knew more than I did of the former transactions, *upon the ground of this very transfer* of the machine shop, with its properties and business, to the Merrimack Company, which had taken place in 1823, and which is the arrangement spoken of by Mr. Lowell. It can no longer be said, therefore, as was said in the course of the opinion of the Supreme Court, cited by Mr. Lowell, that the properties, sold by the Boston Manufacturing Company, could not be considered to have been a part of its capital stock, for the reason that "we have seen no evidence that they were ever treated as such by the proprietors." *

The question then recurs, with these new facts before us, (perfectly well known to Mr. Lowell, but carefully unnoticed by him,) whether the whole of the money dividend, which arose out of those unusual transactions, (and which was a part of the consideration of a transfer so vitally affecting the intrinsic value of the stock, that it led, at last, to a formal reduction of the nominal capital by twenty-five per cent.) ought to have been paid, by a trustee under the will of Mr. Boott, senior, to his widow, as "interest money," (according to the language of the will,) or, "income," (according to the language of the account,) or, whether it ought not, rather, to have been charged in the executor's account, (which claimed allowances of \$1150 and \$1300 for the cost of these shares, then worth only \$725,) as a partial restoration of so much

* 9 Pickering's Reports, p. 463.

of the original capital, so invested, and so diminished by the effect of that transfer? What has the decision in the case of Mr. McLean's will, under a different state of facts, to do with this question? Why does Mr. Lowell cite it, as a case in point, without disclosing the altered state of facts, with which he is perfectly familiar? And what becomes of the value, or safety, of a reversionary interest, under a will, which intends to provide nothing but a fair and ordinary income for the annuitant, and to preserve and secure the capital, unimpaired, for the reversioner, if the trust fund may be thus invested, and dividends, from such sources, destroying the intrinsic value of the stock, may be paid away under the name of "interest money?"

I cannot perceive, therefore, that I have any material error to correct in my former statement on this subject. But whether I have, or not, and whether I am *usually* right or wrong, either in facts or law, I believe my readers will agree with me in this;—that Mr. Boott's account, as drawn up by Mr. Lowell, ought to have stated and shown what he did with that extra dividend, accruing on the eighteen shares, which he held at the time it was made;—that it ought, also, to have shown, whether, in the individual transactions between himself and Mr. Kirk Boott, whereby Mr. J. Wright Boott became the owner of twenty-one shares, in 1826, *the estate got its equivalent* for the purchase, at that date, of those shares at \$1300 each, when they were worth only \$900;—and that it ought, also, to show, to whom the dividends on those twenty-one shares, including all extra dividends in question, went, from 1823 to 1826, during which time the shares were held by Mr. Kirk Boott. About all these matters, we are left just as much in the dark, after Mr. Lowell's explanations, as we were on the face of the account.

CHAPTER XLI.

MR. KIRK BOOTT'S LETTER OF MAY 10, 1833. POSITION OF THE TRUST FUND AT THAT TIME.

Having, in the last chapter, disposed of another false issue, thrown in the way by Mr. Lowell, I may now return to the state of affairs, at the time of the release, given by most of the heirs to Mr. Boott, in April, 1833..

We left him, in May, 1831, urged, in the strongest possible manner, to state and settle his family accounts ; but preferring to throw up his Suffolk agency, and the proposed mission to England. [Ante, Ch. 33, Ch. 34.] We left his friends, Mr. Kirk Boott, Mr. Jackson, Mr. Lowell, and myself, solicitous to bring about a general settlement of all subjects of embarrassment, and to help him into some new and profitable line of business. [Ante, Ch. 34.] So far as his difficulties in connexion with Lyman & Ralston stood in the way, I have shown that they were removed by the settlement, effected, through Mr. Lowell, in September, 1831. [Ante, Ch. 35.] So far as he may have felt hampered by debts to his own family, which he could never hope to pay, I have shown that he was discharged in April, 1833, by every heir in this country, who had an interest in the question, from all liability for any thing beyond the particular trust funds, in which others, besides the general heirs, had an interest. [Ante, p. 373.] So much of his father's estate as those trust funds amounted to, it was hoped that he might, eventually, make good, by engaging in some new pursuit, and earning the means of paying off, gradually, his private incumbances upon them.

Respecting the release, Mr. Lowell says :—

“ This was equivalent to an act of amnesty for the past, so far as there was any thing to forgive, and a pledge of confidence for the future. If any movement was to be made to inquire into the past, it should have been made then ; if any action was meditated for a change of trustee, then was the moment to make it.” [L. p. 195.]

I have already explained the motives which led Mr. Kirk Boott and myself to acquiesce, reluctantly, in a state of things, which could not be helped, nor moved in without mischief to all concerned; and I have alluded to the altered position of affairs, when a removal from the trust was effected under the compromise of 1844,—a subject, to which I shall have occasion to return. That the position of the trust fund, after the release of April, 1833, was viewed by Mr. Kirk Boott as it was by myself, and that there was the most entire harmony of action and feeling between us, on this painful subject, appears by his letter, printed below.

LETTER FROM MR. KIRK BOOTT TO E. BROOKS.

“LOWELL, May 10, 1833.

“MY DEAR SIR:

“After I saw you on ‘Change, this morning, my mother requested me not to mention, to any one, the interview I had with her on Wednesday evening, and I will therefore thank you to forget what I communicated.

I have some misgivings that *if I meddle at all, I may do more harm than good*; and I am not sure that any of the parties exactly know what they would be at. If I can put into shape what I feel, so as to incur little risk of *giving offence*, I think I shall write to J. W. B.; but I am very sensible *how ticklish an affair this is*. If you can give me the benefit of your advice, you may depend upon it, I can keep it to myself. *I still think the best thing mother can do, is to leave the house in the Square, and take a smaller one.* And I am satisfied, if it should be so considered by others, she would consent. I have some thoughts of going down on Sunday; in which case, I hope to be able to see you in the evening.

Yours truly,

KIRK BOOTT.”

This “contemporaneous exposition” shows two things, conclusively, let Mr. Lowell say what he will to the contrary:—1. That Mr. Kirk Boott thought his mother’s pecuniary condition so reduced, that she ought “to leave the house in the square, and take a smaller one.” This alludes to a particular provision of his father’s will, which empowered the executor, with the consent of the widow, to raise a new fund for her benefit, by selling the family mansion in

Bowdoin-Square, buying a smaller house with part of the proceeds, and investing the surplus, arising from the sale, so that she might receive an income from it. This was to be done, (in the language of the will,) "if, from any accident, the money, which is to be laid out and held in trust to procure her an income for her support, should SUFFER LOSS so as not to be SUFFICIENT for her comfortable support." [B. App. p. 9.] Mr. Kirk Boott thought, in 1833, that this case had occurred, and ought to be acted upon,—as the letter shows.

2. It shows, besides, the peculiarities, I speak of, in Mr. J. Wright Boott's character, which made him totally impracticable, and unapproachable, even by such a brother, touching his administration of the family property. Mr. Kirk Boott feared, that, if he meddled at all, in a delicate matter then causing uneasiness, and connected with Mr. J. Wright Boott's affairs, it might "do more harm than good." He dared not enter into a free conversation on the subject with his brother, knowing that such interference would be taken as an offence. He was sensible "how ticklish an affair" it was, even to *write* to him about it, in the most guarded manner; especially, after what he had previously written, as we have seen, without effect.

This letter, alone, completely puts to the rout a host of Mr. Lowell's statements, arguments and suggestions. Was Mrs. Boott's trust fund, really, whole and safe, as he pretends, when Mr. Kirk Boott thought the time had come for the executor, (who had just been released from all present claims of his brothers and sisters,) to carry into effect the clause of the will, above cited, in order to make a new provision for his mother's "comfortable support"? Did he doubt such mal-administration of these trust funds, without dishonesty of intention, as I have described, even while he thought his brother a safe and competent person to be employed in a different kind of agency? Does he not bear direct testimony to some of the circumstances, which made it impossible, without a rupture, to get a settlement of accounts? Does he not show, distinctly, that singularity of character, in Mr. J. Wright Boott, which caused his attached and confiding relatives to

permit him to keep their interests wrapped up, unaccounted for, in his own impenetrable reserve and mystery? Was Mr. Kirk Boott, let me ask, "blinded by excited feelings of animosity," as Mr. Lowell says I am, [L. p. 106.] when he took this view of affairs? Can it be true, as Mr. Lowell pretends, that, at the time of the release, the heirs were *indebted to Mr. J. Wright Boott*, for a small over-advance of three or four thousand dollars, instead of his being indebted to them in a much larger sum? Was it "that they might not even know the sacrifice he had thus made on their behalf," that "he put off the settlement of his accounts"? [L. p. 58.] For so Mr. Lowell pretends to explain the fact,—suggesting, that, "when, in 1833, the heirs came forward and tendered to him a discharge in full, he was touched by this mark of their affection and confidence"; and "accepted the discharge, *mentally resolving*" (for Mr. Lowell assumes to know even Mr. Boott's secret thoughts, when occasion requires it,) "never to demand of them any restitution." [L. p. 58.]

Against all this, the facts, which have now been shown, speak, with sufficient distinctness. The trust fund, for the support of Mrs. Boott, was lamentably deficient; and could only be restored through the large income from the manufacturing stocks, in which it was invested, (if they could be preserved,) combined with prudent management, economy of expenditure, and the acquisition, by Mr. J. Wright Boott, of new means to pay off his private debts, through some profitable employment. The heirs *believed*, at least, (so much, Mr. Lowell is obliged tacitly to admit, in accounting for the discharge,) that more was due to them than they had yet received. Notwithstanding the caution of Mr. Kirk Boott and myself to make no unnecessary disclosures, that might harm Mr. Boott, it was found that—

"The disastrous result of the business at the Mill Dam had at last become matter of notoriety. It had come to be understood in the family, that he had been a great loser, and that property had been lost, in which the heirs of his father's estate had an interest, though the extent of the calamity was known only to Mr. Kirk Boott and

myself. It was apparent, or at least it was believed, that the fact of his indebtedness to the heirs, among other things, preyed heavily upon him. Every member of the family felt great sympathy for him under the misfortune. He was himself most solicitous to get relieved from some part of his burden." [B. p. 45.]

Those were the circumstances, as I formerly stated them, under which Mr. Kirk Boott and myself, hoping to place Mr. J. Wright Boott in a position to retrieve his affairs, proposed to, and obtained from, the other heirs, the release, of April, 1833,—every heir understanding that he freely gave up all that was then due to him, and Mr. William Boott, in particular, understanding, (because his brother Wright had told him so,) that the right, he gave up, represented \$20,000. The reader may now compare the probability of Mr. Lowell's statement, and of mine, in this part of the history. He may judge, for himself, whether I have been guilty of any exaggeration, and whether it is I, or Mr. Lowell, who misrepresents the realities of the case.

CHAPTER XLII.

POSITION OF MR. BOOTT, AND OF THE TRUST FUND, AND OF THE DEBT TO MR. LOWELL, AFTER THE SETTLEMENT OF THE GUARDIANSHIP ACCOUNTS, IN 1835.

The only other important event, which occurred, to alter Mr. J. Wright Boott's pecuniary condition, was a settlement with his wards, in January, 1835.

This makes another convenient resting place, from which we may see, with considerable exactness, how he, and the family trust fund, stood.

I have heretofore shown, that all the property, put in trust

in May, 1831, for the purpose of securing the guardianship debts and the principal annuity fund, was, at its then value, insufficient to pay those debts, and form that fund, by more than \$50,000. [Ante, p. 353.] In the mean time, there had accrued, upon the manufacturing stocks, (one hundred and twelve shares of Merrimack and Boston together;*) nearly four years income. This may be set down at an average of at least ten per cent. per annum, making an aggregate, for the period from May, 1831, to January, 1835, of about \$40,000.† Of this sum, not more than one half was, probably, taken up by Mrs. Boott, in the support of her establishment; for she lived, at that time, with rigid economy. The other half, say \$20,000, was left free, and capable of being applied by Mr. Boott to the payment of interest, and the extinguishment of some part of the principal of his debts. Whether it was so applied, or not, we shall presently see.

I have shown, that, in November, 1831, Mr. Boott reduced his debt to Mr. Lowell, from \$30,000 to \$25,000, by a partial payment, probably from the cash received out of the sale to Lyman & Ralston, [Ante, p. 359.] Mr. Lowell has shown, that the debt to Mr. Sturgis, of \$21,000, was, soon after, assigned to him, Mr. Lowell. [L. p. 96.] Thus the total debt to Mr. Lowell became \$46,000; at, which, he says, it

* There is a slight seeming confusion as to the exact number of these shares, when spoken of at different dates, arising thus: Mr. Boott's memorandum of 1830, which intended to embrace all the property, except that which he held for the F. Boott family, enumerates one hundred and *eleven*. In 1831, ninety-two shares received the executor's mark, and twenty more, instead of nineteen, were transferred to me in trust; and these twenty were transferred by me, after the settlement of the guardianship accounts, to Mr. Boott, as executor, agreeably to the provisions of the trust. This made one hundred and *twelve* which he admitted to have come to him, as executor. *Two* of these he sold, in 1837; [B. App. p. 31.] and one hundred and *ten* appear in the probate accounts, of 1844.

† The actual dividends, between May 22, 1831, and Jan. 1, 1835, were, I find, \$450 upon each share of Merrimack, and \$230 upon each share of Boston. The whole number of the former was seventy-three; namely, forty-two pledged to Mr. Sturgis, twenty-five pledged to Mr. Lowell, and six conveyed in trust to me. Of the latter, there were twenty-five pledged to Mr. Lowell, and fourteen conveyed in trust to me; in all, thirty-nine. Hence, the reader will perceive, that the exact amount of the dividends, in that period, was \$41,820.

stood "after January, 1834;" [L. p. 97.] how long after, he does not tell us. Now it may have been increased, after January, 1834, and I believe was; but I think it certain, that the debt could not have been diminished, until after the settlement of the guardianship accounts, early in 1835; for that settlement demanded all Mr. Boott's cash resources.

The interest on the debts of \$30,000 and \$21,000 to Messrs. Lowell and Sturgis, from May to November, 1831, and on the debt of \$46,000 to Mr. Lowell from November, 1831, to the early part of 1835, must have amounted to near \$10,000. This, being paid out of the dividends on the pledged stocks, would have left, after allowing \$20,000 for Mrs. Boott's expenditure, about \$10,000 of the unexpended income from all the stocks, capable of being applied to the guardianship debt. The collections, made by me, from the property I held in trust under the assignment to me of May 23, 1831, (exclusive of the dividends from manufacturing stock, already allowed for above,) were, for principal and interest on Lilly's note, about \$5200, as the receipts show. [B. App. 26-8.] From these two sources, then, (my collections, and the unexpended income of the manufacturing stocks,) there was a fund of about \$15,000, applicable to the gradual reduction of the guardianship debt.

The probate accounts show, that Mr. Boott had subscribed, for account of his wards, to the Lowell Railroad, and the Lawrence Manufacturing Company; and that the assessments, paid by him upon these shares, prior to the settlement of the accounts, had amounted, in the three last years, to about \$11,000.* On two of the accounts there was, also, during the same period, an investment of \$10,000 in stock of the National Insurance Company; and the cash paid over, at the final settlement, on all the accounts, appears to have exceeded \$15,000.

* Assessments paid on nine shares of Lawrence Manufacturing Company, were \$900 per share,	\$8100
Assessments paid on eight shares of Boston and Lowell Railroad, were \$400 per share,	3200
	<hr/> 11,300

To effect so large a payment to the wards, in January, or February, 1835, it is plain that moneys must have been borrowed. This we shall see by looking back to the state of the debt in 1831, and to the means applicable to its reduction.

The whole guardianship debt, principal and interest, had stood, in 1831, (immediately before the partial payment to one of the wards, who was married in that year,) at about, [Ante, p. 235.]	\$46,500
The principal assets applicable to its reduction, before the final settlement in 1835, are shown to have been, 1. The proceeds of the store,	\$16,000
2. The cash proceeds from the sale of the foundry, less \$5000 paid to Mr. Lowell,	2,600
We may now add, 1. Dividends from manufacturing stock, beyond Mrs. Boott's estimated expenditure, and deducting interest paid to Messrs. Sturgis and Lowell, say	10,000
2. Collections made by me from Lilly,	5,200
	—
	33,800
This leaves, still to be raised, in January, 1835, about	12,700
And to this must be added the further balance of interest, which had meanwhile accrued, (between 1831 and 1835,) on the guardianship accounts, amounting, according to Mr. Tyler, to about	1,100
	—
	13,800

Now how could this money have been raised? None of the manufacturing stock appears to have been sold, at any time, after 1831, except two shares of Merrimack; and they were not sold till 1837. [B. App. p. 31.] Lilly's note and mortgage, which I surrendered to Mr. Boott at or about the time of the settlement, was not sold to Mr. Welch, until October, 1835,—that is, nine months after the settlement. [Ante, p. 290.]

The necessary inference is, that, to effect the settlement with the wards, some new temporary loan must have been made, the amount of which can only be guessed by a tolerable approximation. How and with whom, and on what se-

curity, this was effected, Mr. Lowell's accounts with Mr. Boott might probably explain ; and the fact, if explained, might have some further bearing on the question of Mr. Lowell's lien on the manufacturing stocks, in 1844, as against the estate. With seventy-one shares of these mahufacuring stocks in his hands, estimated at the prices of 1835, Mr. Lowell, if he chose to treat them as the property of Mr. Boott, might very well have made all the further advance that was required. But, on these matters, the "Reply" still leaves us "groping about in utter darkness and ignorance." [L. p. 72.]

A large part of Lilly's note, however, appears to have been eventually realized, as well as the value of the two shares of Merrimack, sold by Mr. Boott, *as executor*, in 1837, [B. App. p. 31.] although no such transaction appears in that probate account of 1844, which Mr. Lowell says is a *complete* account of all the executor's dealings.* If a temporary loan was made, as I conjecture, in 1835, to enable Mr. Boott to settle with his wards, the above mentioned means, when they accrued, contributed to pay it off. We may, therefore, well enough view the collections from these sources as if they had gone, at once, and directly, towards the payment of the guardianship debt, instead of reaching it through the medium of a temporary loan. This view is taken for the single purpose of estimating Mr. Boott's position, and that of the trust fund, after the guardianship debt was finally paid. And the case was simply this. There remained, in 1835, *no* property of Mr. Boott standing in his own private name. There did remain standing in his name as executor, and in the name of Mr. Lowell, his pledgee, the same property, which appears in the probate account of 1844. This property stood subject to the pledge to Mr. Lowell, for a debt, which was then, by his own admission, at least \$46,000 ; and, I believe, was in fact considerably

*I do not count, as a sale of stock, the twenty-three shares of *new* stock, issued to Mr. Boott as executor, in November, 1838, and immediately sold by him ; [B. App. p. 31.] because this was a species of dividend, and might, perhaps, have been reckoned as income. If so, it may have been included in the lumping debit and credit of \$274,686 36. And it may not. Who knows ?—except Mr. Lowell. It certainly does not appear in the account in any other way. Yet this is an item of \$23,000, or more ; and I, an heir, am, to this day in doubt about it !

larger, in consequence of some further temporary advance. But, to avoid conjectural statements, as far as possible, I take the debt as he himself has admitted it to have been, "after January, 1834." [L. p. 97.]

This whole property, at its value in May, 1831, has been shown [Ante, p. 379.] to have been about \$111,000 If Mr. Lowell's debt is to be paid by the property, taken at that valuation, it subtracts 46,000

The clear balance left for the trust fund, was, in that case, only 65,000

If, on the other hand, the manufacturing shares and the stable, be taken, as Mr. Lowell contends they should be, at their cost to Mr. Boott, the whole property was, still, only [Ante, p. 356.] \$121,500 and deducting Mr. Lowell's debt of 46,000

There remained but 75,500

On either principle of valuation, the deficiency in Mrs. Boott's trust fund, was, early in 1835, from near 25,000 to near \$35,000; and if we admit the fact, deduced from the figures of the probate account, that there had been an over-payment to the heirs of about \$3700, which had encroached upon the trust fund, and further admit that this ought to be allowed to the executor, notwithstanding that he had no right to make such an encroachment, the deficiency must still stand at from \$21,000 to \$31,000. The actual market value of the stocks, in 1835, had they been then used to pay Mr. Lowell's debt, might vary this deficiency somewhat; but, taking them at their average value, the variation would not be a favourable one for the fund, the Merrimack never being enough above par, (which was its cost to Mr. Boott,) to overcome the loss upon the Boston, compared with its alleged cost of \$1150 and \$1300 per share. The deficiency could rarely, if ever, have been reduced in that way below \$20,000.

Now is it not justly amazing, that in the face of this indisputable fact, existing as late as 1835, Mr. Lowell without

pretending that there was any other property than I have above accounted for, or that Mr. Boott was, afterwards, in any business, by which either property or income was acquired, should have ventured to draw up an account, in 1844, claiming a balance of \$25,000, as due from the estate to Mr. Boott, and should have the assurance to insist, up to the present moment that it is a true and complete account, and further to insist, that *no part of the income from the trust property was ever applied to the payment of Mr. Boott's debts?*

C H A P T E R X L I I I .

APPROPRIATION OF TRUST FUNDS TO THE PAYMENT OF MR. BOOTT'S DEBTS.

The suggestion, at the close of the last chapter, brings us, fairly, to the consideration of the largest item in the account, which has not yet been touched,—the sum of \$274,686 36, charged in a lump, for “income received on the trust fund for the widow, from March, 1818, to November, 1844;” and, also, credited in a lump, by a precisely corresponding sum, under the head of “Income paid to, or for account, and by order of, the widow.”

This credit I formerly spoke of as “fictitious;” [B. p. 116.] to which Mr. Lowell excepts. [L. p. 94.] I also said, that “he [Mr. J. Wright Boott] was enabled, by the aid of the large dividends, which accrued upon that stock, [the manufacturing stock] to discharge all his personal debts, except the debt to Mr. Lowell,” [B. p. 57.] meaning, by that exception, the \$25,000, remaining due at the time of the making up of the probate account, which, from Mr. Lowell’s

concealment of the subsequent advance to Mr. Sturgis, and other probable advances, I supposed to be the balance of the old \$30,000 loan, reduced by the payment of \$5,000 in November 1831, instead of the balance of a series of loans and advances, as it now seems to have been. The amount of the debts, so paid out of the income of the trust property, I specified as not less, towards the end of 1843, than "about \$60,000." [B. p. 142.]

These passages Mr. Lowell selects for his answer, which is as follows :—

"Let us look at this a little more narrowly. Mrs. Boott's income, as shown by the accounts, had been for twenty-seven years \$275,000, or a little more than \$10,000 a year. For the thirteen years from 1831 to 1844, the gross income of all the manufacturing stock did not exceed \$12,000 a year. It should be remembered, that Mr. Boott held, through all this period, stocks which had cost him \$120,000, while the trust fund for his mother was precisely \$100,000. He had, therefore, *a perfect right to retain one sixth part of the income of those stocks*, amounting, as I have said, to \$12,000; that is, *he had a right to retain \$2000 a year to be appropriated to his own use, or to the payment of the principal and interest of his debts.* It was for this very purpose, that the debt to me was permitted to continue, instead of being paid off by a sale of a portion of the stock in 1831." [L. p. 92.]

The substance of the answer, therefore, is :—

1. A distinct admission of the fact, that, for the thirteen years from 1831 to 1844, Mr. Boott did retain and appropriate to his own use, in the payment of the principal and interest of his debts, \$2000 a year, out of the gross income of the manufacturing stocks, under-estimated by Mr. Lowell at \$12,000 a year. This \$2000, annually subtracted for thirteen years, amounts, without interest, to \$26,000.

2. A justification of the fact, upon the ground that he had a *right* so to retain and appropriate *one sixth* of the income, because the stocks had cost him \$120,000, while the trust fund for his mother was precisely \$100,000.

My reply is, in the first place, that the admission is very far short of the truth, and that the amount, so appropriated, considerably exceeds my former statement. In the next, that the justification is nothing but a puerile evasion, depending,

not only upon the assumed right of Mr. Boott to charge the stocks to the trust fund at their original cost to him, instead of their fair value in 1831, but, also, upon the application of that assumed right to the state of the accounts in 1844, *after* his private debts, out of the family, had all been paid off, except the \$25,000 due to Mr. Lowell, instead of applying it to the state of the accounts *before* these debts had been paid, although the very question is how, and out of what fund, the payments were made.

We have just seen, that, as late as 1835, Mr. Boott owed to Mr. Lowell at least \$46,000, probably more; that he had no property left, to pay it with, except that, which he held as executor, or which he had transferred, as executor, to his private pledgees; and that, taking the whole of this property at the rate, which Mr. Lowell contends for, and at which it is charged in the account, that is, \$121,500, there was, at that time, (1835,) after deducting the incumbrance, (estimated at \$46,000 only,) but \$75,500, instead of \$100,000, left for Mrs. Boott's trust fund. [Ante, p. 425.] The change, that had occurred in 1844, was, that \$21,000, out of the \$46,000 of debt, had been paid off,—reducing the incumbrance to \$25,000. Hence, the state of the fund, at the moment of making the account in 1844, was, that the executor held property, said to have cost him \$121,500
 subject to a pledge to Mr. Lowell of 25,000

and leaving clear for the trust fund, valuing

the stocks at their cost, 96,500

Mr. Lowell, instead of first paying himself out of the pledged property, as he had a right to do if he still retained a lawful lien upon it, chose to part with his lien, and to surrender the whole property to the executor, after having, first, made up an account for the executor, which exhibited an apparent accountability (leaving out the mansion-house,) for the sum of \$96,284 55 only, and exhibited property, by charging it at its original cost to Mr. Boott, to the amount (without the mansion-house,) of \$121,500. The difference between these two sums, being \$25,215 45, is that, which is

claimed as the private property of Mr. Boott, in the shape of an alleged "cash balance due to the executor." [L. p. 39.] This, supposing both parts of the account perfectly true, furnished a fund just sufficient to pay Mr. Lowell.

But, granting all this to have been true, in 1844, the question recurs, out of what fund had the principal of the \$21,000 debt been extinguished, since 1835? and out of what fund had the interest, since 1831, on the whole \$46,000 been kept down? Why, says Mr. Lowell, since "Mr. Boott held, through all this period, stocks, which had cost him \$120,000, while the trust fund for his mother was precisely \$100,000," the account proves that one sixth of the stocks, (about \$20,000 in cost,) belonged to Mr. Boott, and, consequently, one sixth of the income, or \$2000 per annum, was his own.

Very well. Granting that, also, for the present, what was the debt in 1835? At least \$46,000. [Ante, Ch. 42.] And what was the interest upon it? At least \$2760 per annum. But, in 1844, the whole of this *interest* had been *kept down*, and \$21,000 of the *principal paid off*. Now will Mr. Lowell have the goodness to tell us how this was done, out of an income of \$2000 a year? Certainly \$1500 a year was needed to keep down the annual interest on the \$25,000 of debt to Mr. Lowell, which, in 1844, still remained unpaid. There was, then, but \$500 a year, out of the \$2000, applicable annually, from 1835 to 1844, to the reduction of the \$21,000 debt; and the *mere interest* upon that debt amounted to \$1260 a year, so long as the principal was unreduced. Instead, therefore, of Mr. Boott's being enabled to pay off the \$21,000 debt, and its interest, out of the \$2000 a year, while interest was kept down on the \$25,000 debt besides, it follows, as clearly as that two and two make four, that the \$21,000 debt ought to have accumulated, at the rate of \$760 a year, unless something else than the income from *one sixth* of the stocks were taken to pay it with. Present property of Mr. Boott there was none, except his interest, if he had any, as Mr. Lowell pretends, in these stocks. The "Reply" does not even suggest that Mr. Boott owned any *other* species of property, except his *reversionary* interests in the trust fund

and the mansion-house ; and these he never disposed of, for the payment of debt. We have already seen that every thing else, formerly owned by Mr. Boott, had proved insufficient to pay off his guardianship debt, to which it has been above appropriated. [Ante, Ch. 42.] It follows, then, from Mr. Lowell's own premises, that \$760 a year of interest, from 1835 to 1844, amounting in those nine years to upwards of \$6800, together with \$21,000 of principal, in all \$27,800, *must* have been paid out of the income of those *five sixths* of the stocks, which Mr. Lowell *admits* Mr. Boott did *not* own ; in other words, that *so much*, at least, of his private debt must have been paid out of the *admitted income* of the *admitted trust fund*.

But, further, this supposed private interest of one sixth, in the stocks held by Mr. Boott nominally as executor, (admitting the right to charge them at cost,) is an interest first created contemporaneously with the making of the account. It is created by Mr. Lowell's own act, in *then transferring* all the stocks, held by him in pledge, to Mr. Boott, as executor, instead of first paying himself out of them. Before that transfer, the equitable interest of one sixth and more, in the stocks, justly belonged, not to Mr. Boott, but to Mr. Lowell, the pledgee, unless he had lost his lien by his private dealings with Mr. Boott ; for the stocks had been pledged as security for a debt, on which \$25,000 was, in 1844, still due, and due from a man, who had no other means to pay with, unless Mr. Lowell had been content to exchange his right to present payment for a mere reversionary interest ; and that was never done. Mr. Boott, certainly, could not have, or acquire, a personal interest, by any right or act of his own, in these pledged stocks, until he had first redeemed them from the pledge by some means of his own. Their value, beyond the pledge, Mr. Lowell admits, belonged to the estate. Mr. Lowell, then, *confers* the interest on him, if he gets it at all, by transferring the stocks clear of that debt. Just look, then, at the curiosity of the argument.

My allegation is, that Mr. Boott had been, for years back, paying his own debts, to a very large amount, out of the in-

come of his trust funds, which were invested in certain stocks. Mr. Lowell, on the 18th of November, 1844, does an act, which on that day, for the first time, vests in Mr. Boott, personally, as he contends, a certain limited interest, equal, as he says, to one sixth, in those same stocks ; which interest, up to that time, had, for many years, belonged to Mr. Lowell. And he then says, in effect, "Mr. Boott could not, in *former years*, have been paying off his debts out of the income of the stocks held in trust, because, you perceive, he himself, *now*, owns one sixth of these stocks, and consequently one sixth of the income must *always* have been his, and might well have been applied to the payment of his own debts." This looks very much like the "attributing of an antecedent event to a subsequent cause,"—which Mr. Lowell says, "requires a peculiar constitution of mind," and to him "would have been impossible." [L. p. 12.]

But, although Mr. Lowell's admission, as above shown, establishes the fact, beyond dispute, that Mr. Boott had thus applied near \$28,000 of the income from his trust funds, in the years from 1835 to 1844, this, I have said, is far short of the truth. I now propose to show the extent, to which this was done, from the time of the reconstruction of a trust fund, in May, 1831, to the date of the probate account in November, 1844. And, for this, it is only necessary to look back to the state of affairs just *before* May, 1831, and to see, once more, what the debts were, and what the means.

For this purpose I begin at the time of the sale of the store, in February, 1831. I exclude the debts of the foundry, and of Lyman & Ralston, whether more or less, because they were all wiped off, so far as Mr. Boott is concerned, by the settlement of September, 1831 ; and I count the cash, which Mr. Lowell says came from that settlement, as means for the payment of other debts. I exclude all question about the particular trust fund, for the aunts, of \$11,111 12, and about indebtedness beyond the trust funds, and I count the liability to the estate at \$100,000 only,—the amount of the required fund for Mrs. Boott. I take the property, too, standing in the name of the executor, at its alleged cost to Mr. Boott, as Mr.

Lowell requires. I take all other assets, which Mr. Boott then had, at what they actually produced, and charge against him none but the unquestionable debts. That is, I take, throughout, Mr. Lowell's own premises, except for the amount of the guardianship debt, which I take as it now stands corrected by Mr. Boott's own guardianship accounts :—

The amount of that debt, before the partial payment from the proceeds of the store, was, as Mr. Tyler shows from those accounts, interest included, [Ante. p. 235.] about	\$46,500
The further balance of interest, which accrued before the final payment to the wards, in 1835, according to the highly favorable principle for computing an interest account adopted by Mr. Tyler, was about	1,100
Total guardianship debt paid off, after the sale of the store, in 1831,	47,600
To this debt I now propose to apply all the means Mr. Boott had, except the property, which stands in his executor's account, and its income, and except the sum of \$5000, which he paid to Mr. Lowell, in November, 1831, viz.	
Proceeds of store, [L. p. 86.]	\$16,000
Cash proceeds of foundry, less the \$5000 payment to Mr. Lowell, [L. p. 79.]	2,624
Collected by me, on Lilly's note, principal and interest, [B. App. pp. 26-28.]	5,212
Amount realized from the final sale of that note to Mr. Welch, in October, 1835, which I apply, by anticipation, in January, 1835, [Ante. p. 290.]	5,500
Two shares of Merrimack, sold by the executor, in March, 1837, [B. App. p. 31.] which I also apply by anticipation, and assume to have produced 33 per cent. advance,*	2,660
Dividends on same, from May, 1831, to January, 1835, †	1,060
	33,056
	14,544

* This, I believe, was about the market price at that time.

† They were: 1831, May, per share,	\$80
" Nov. "	100
1832, May "	60
" Nov. "	40
1833, May "	60
" Nov. "	70
1834, May "	60
" Nov. "	60
	\$530

It is plain, since we have exhausted all other means, that this balance of \$14,544 could have been paid from nothing but the income of the stocks comprised in the account. It *may* have been paid, for the moment, it is true, in 1835, by some *new temporary loan*; but, if so, *that loan*, with the *interest* upon it, must finally have been paid out of the income from those stocks, for the reason above stated, namely, that we have exhausted all the other means, by appropriating them, directly, to the guardianship debt; and it is most favourable for Mr. Boott, on the score of interest, to take no account of such new loan. This settles one item.

Then comes the original debt to Mr. Lowell. That debt, in May, 1831, was \$30,000; in November, 1831, it was reduced, by a payment, which I have above taken from the cash proceeds of the foundry, to \$25,000. It remained at that, in November, 1844. Consequently, there was paid upon it, six months interest on 30,000, and thirteen years interest on \$25,000, (amounting to \$20,400,) which, for the same reason, could only have been paid out of this income. This is another item.

Next comes the debt to Mr. Sturgis, which, in May, 1831, was \$21,000. It was transferred to Mr. Lowell in November, 1831, but remained unreduced till "after January, 1834," as the "Reply" tells us, [L. p. 97.] and, as I have above inferred, till after the settlement of the guardianship accounts, in 1835. When, and by what instalments, it was in fact paid off, we are not informed, but may safely infer that it was only gradually reduced. Indeed this seems to be the effect of Mr. Lowell's statement, [L. p. 97.] "that Mr. Boott reduced his debt to me \$26,000, *during* these very thirteen years;"—the \$26,000 being composed of the \$5000 paid in November, 1831, on account of his old \$30,000 loan, and the \$21,000 debt purchased from Mr. Sturgis, which is now in question. Considering the amount of income necessary for Mrs. Boott, and the amount of interest to be paid, annually, on this \$21,000 debt, and on the \$25,000 also due to Mr. Lowell, and that, up to 1844, nothing had been found applicable to the further reduction of the \$25,000 debt, we may not unreasonably allow the whole eight

years, between 1835 and 1844, for the final extinction of the \$21,000. Interest was paid, of course, upon the whole sum for the four years from 1831 to 1835; and if eight years, after that, were required for the gradual payment of the principal, we may fairly reckon that the interest upon the decreasing capital during those eight years, was equal to about four years more of interest on the whole sum. This gives for interest, in all, about \$10,000, which, together with the principal of \$21,000, must have been paid, wholly, from the income of the stocks.

Let us now put these sums together:—

Balance of the guardianship debt, after applying to it all other means, except income from the stocks,	\$14,544
Interest on the old debt to Mr. Lowell, from May, 1831, to November, 1844,	20,400
Interest on the Sturgis debt, purchased by him, from 1831 to 1843,	10,000
Principal of that debt,	21,000
	<hr/>
Total,	\$65,944

These are sums, which, we see and know, must have been paid from the income of the stocks held by the executor, according to the account of 1844, simply for the reason that there was nothing else to pay them with;—for we have previously applied to the guardianship debt *all the other property there was* in Mr. Boott's hands, and all the income upon it; and Mr. Lowell himself tells us, that “Mr. Boott entered into no mercantile business, or speculations” after 1831; [L. p. 91.] and we have seen that he refused the agencies and employments offered to him, from which he might have derived income; and it is not pretended that he in fact earned any thing, thenceforward, to the day of his death.

This \$65,944 was a sum subtracted from the *income*, merely, of funds belonging to the executor, in the course of thirteen years, being at the rate of more than \$5000 a year. Either the estate, therefore, or Mrs. Boott was the loser, by appropriation during that period, to Mr. Boott's debts, of more than \$5000 a year, for each year of the series, and of course was the loser of the interest upon each sum of \$5000,

from the time it was taken. Simple interest upon \$5000, annually subtracted, will be found to amount, at the end of the thirteen years, to something like \$25,000 more.* In all, principal and interest, over \$90,000! And this is only one particular loss, occasioned by the mismanagement of Mr. Boott, as shown from premises, which Mr. Lowell has admitted, except so far as they depend on simple arithmetic, and on the correction in the amount of Mr. Boott's debt to his wards.

Who represents truly, then? I, who said that at least \$60,000 of Mr. Boott's debts, in principal and interest, was paid out of the income of his trust funds? Or Mr. Lowell, who comments upon that statement as if it were an utter falsehood, and declares that nothing had ever been so applied, except Mr. Boott's own property and income? Even if the \$2000 a year, which the "Reply" claims to have been Mr. Boott's private income, were made out to be his, this would fall short of the amount subtracted from the income of these funds, by an aggregate of about \$40,000.

But did Mr. Lowell, in making up the account for Mr. Boott in fact subtract one sixth of the income from all the stocks as Mr. Boott's? Or did he treat it all as *Mrs.* Boott's?

Since the account gives us nothing but a result, purporting to be the aggregate of all the income "on the trust fund for the widow" during the whole period of the executorship, it is impossible to see, from the account, how this aggregate was arrived at; and the "Reply" does not tell us. But let us see how near an approach to it we can make by evidence *aliunde*.

We know, precisely, what stocks originally constituted the trust fund, as formed April 1, 1818. We know this from the executor's probate account of that period. [B. App. p. 14.] I have already stated its contents, and I have ascertained and shown the dates, at which the executor parted with each parcel of the stocks, named in that account, except a portion of the U. S. 6 per cents., of which the record of transfer is miss-

* If the \$5000 were taken out at the *beginning* of each year, the interest, at the end of the thirteen years, would amount to \$27,300. If taken out at the *end* of each year, the interest would be \$24,000.

ing. [Ante. pp. 268-271.] That portion, (since we know it was sold at *some* time,) may fairly be presumed, in the absence of any evidence to the contrary, to have been sold at or near the same time with the other stock of the same description. With that assumption only, I have ascertained, and state in a subjoined note, the income upon all the stocks, composing the trust fund of 1818, during the times they were respectively held by the executor.*

So of the manufacturing stock, afterwards purchased by Mr. Boott: we are informed by the account, and the "Reply," and by certified transcripts from the stock records of the companies, which I formerly printed, [B. App. pp. 30-33.] exactly how many shares of each kind of stock were considered and treated by Mr. Boott as representing his trust funds. After ascertaining the number of shares in each company held for the trust, at different periods, there is no difficulty in ascertaining the amount of the dividends received upon them; since the dividends paid, from time to time, by those companies, are matters of notoriety, and are recorded in their books, and in the books of the individuals who received them, and in other private records. I have ascertained these, also, during the entire period, and state them in a subjoined note.* And what is the result? The aggregate of the income thus ascertained, from 1818 to 1844, is \$274,982 36; and the sum, with which the executor is charged, for income, in the probate account, is \$274,686 36. That is to say, there is a difference of only \$296.

How happens this very close approximation of an estimate, made in that manner, from unquestionable data, to the state-

* STATEMENT OF DIVIDENDS,

Received on stocks held by the executor, during the time he held them.

SUFFOLK INSURANCE COMPANY. 510 shares, par \$17,000.

Bought, April 1, 1818. [See executor's account, B. App. p. 14.]

Sold, April 15, 1824, [Ante. p. 268.]

Dividends, ascertained from books of the company. In 1818, none. In 1819, April, 10 per cent.; October, 6 per cent. In 1820, 1821, 1822, 1823, and April, 1824, each six months, 6 per cent.

Total, 70 per cent. on \$17,000, is	\$11,900
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ment of the account? Is it mere accident? Or, does it indicate that the statement of the account was arrived at by some similar process? Is the difference greater than may be reasonably accounted for by some arithmetical error, or some trifling discrepancy in the estimate of some one of the dividends? Unless Mr. Lowell shall disclose, therefore, some *additional subject of income*, taken into consideration by

SUFFOLK BANK. 200 shares, par \$20,000.

Bought, April 1, 1818. [See executor's account, B. App. 14.]

Transferred to Boott & Lowell, October 2, 1822. [Ante. p. 271.]

Dividends, ascertained from books of the bank. 1818, April, none; October, 1 1-2 per cent.; 1819, 1820, April and October, 3 1-2 per cent. each; 1821, April, 2 1-2 per cent.; October, 3 per cent.; 1822, April and October, 2 1-2 per cent. each. Total, 26 per cent. on \$20,000,

\$5,200

U. S. 7 PER CENT. STOCK. Par, \$31,111 11.

Bought, April 1, 1818. [B. App. p. 14.]

Transferred to Boott & Lowell, October 1, 1822. [Ante. p. 268.]

Four annual dividends, of 7 per cent. each, on \$31,111 11, are - \$8,711 11

U. S. 6 PER CENT. STOCK. Par, \$43,000.

Bought, April 1, 1818. [B. App. p. 14.]

Sold, \$21,000, in July and August, 1819. [Ante. p. 269.]

Remaining \$23,000, of which the record of transfer is missing, supposed to have been sold about the same time.

One annual dividend of 6 per cent. on \$43,000, is - \$2,580

BOSTON MANUFACTURING COMPANY.

Mr. Boott subscribed, March 1, 1820, for thirty shares, [B. App. p. 32.] of which eighteen are stated in the "Reply" to have been for the account of Mrs. Boott's trust fund. [L. p. 69.]

In March, 1826, the number of shares was increased to thirty-nine, by transfer of twenty-one from Mr. Kirk Boott, [B. App. p. 32.] which are stated in the "Reply" to have been for the account of the trust fund. [L. p. 70.]

Dividends, ascertained from Mr. Boott's guardianship accounts, and other private records, on each share, as follows:—

1820, April and October,	\$50 00	1826, April and October,	\$80 00
1821, "	200 00	1827 "	90 00
1822, "	225 00	1828 "	120 00
1823, "	188 12 1-2	1829 "	75 00
1824, "	250 00	1830 "	70 00
1825, "	290 00	1831 "	110 00
	—————	1832 "	100 00
Total received on one share, 1,203 12 1-2	1833 "	"	100 00
Multiply by No. of shares, 18	1834 "	"	70 00
	—————	1835 "	80 00
Aggregate,	\$21,656 25		\$895 00

him in preparing the account, I think the reader, when he sees that the only stocks, ever held by the executor, yielded, during the time he held them, an aggregate of income, which is only

<i>Brought over,</i>	\$895 00
1836, April and October,	70 00
1837, April,	30 00
1838, October,	30 00
1839, April and October,	60 00
1840, October,	30 00
1841, April and October,	60 00
1842,	00 00
1843, October,	30 00
1844, April and October,	80 00
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Total on one share,	\$1,285 00
Multiply by No. of shares,	39
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Aggregate,	\$50,115 00

MERRIMACK MANUFACTURING COMPANY.

Mr. Boott's subscriptions to the first and second issues of stock were for 96 shares, of which 20 were sold, or transferred, before the first dividend, in June, 1825, leaving seventy-six shares, of which eight were, afterwards, put to the guardianship accounts. [B. App. p. 30.] This left sixty-eight shares for the executor's account.

In February, 1826, the number was increased to seventy-three, by a transfer of five shares from Mr. James Boott. [B. App. p. 30.] These seventy-three shares were all marked as belonging to the estate, by the arrangements of May, 1831; viz. forty-two shares under pledge to Mr. Sturgis, twenty-five under pledge to Mr. Lowell, and six transferred in trust to me. [Ante. p. 198, 293, and B. App. p. 23.]

In February, 1837, two of these shares, which had been restored to the executor, were sold by him, [B. App. p. 31.] leaving, from that time, seventy-one, the number stated to be on hand by the account of 1844. [L. p. 39.]

The dividends, received on these shares, up to the date of the probate account, (Nov. 18, 1844,) were, for each share, as follows:—

1825, June and Dec.	\$175			1837,	\$000
No. of shares,	68	1826, June and Dec.	\$80	1838, Nov.	370
—	1827, " "	90	1839, May and Nov.	110	
Aggregate,	\$11,900	1828, June, or July,	60	1840,	" " 90
		1829, Jan.	60	1841,	" " 120
		1830, May and Nov.	80	1842,	" " 80
		1831, " "	180	1843,	" " 160
		1832, " "	100	1844,	" " 100
		1833, " "	130		—
		1834, " "	120		1,030
		1835, " "	180	No. of shares,	71
		1836, " "	150		—
			\$1,230	Aggregate,	\$73,130
		No. of shares	73		—
		Aggregate,	\$89,790		—

a fraction short of \$275,000, and that the sum, spoken of as income in the account, is, also, only a fraction short of \$275,000, will be apt to infer, that sums, so nearly coincident, represent, in truth, and are intended to represent, the same substantial thing. In other words, I think the reader must infer, that Mr. Lowell, when he made up that item of the account, *intended* to state the amount of *all* the income, which the executor had actually received from *these stocks*, during the time that he held them, from the date of the formation of the original trust fund, to the date of the rendition of the probate account of 1844.

For the purpose of the account, it is true, that, in one view, it was very immaterial whether the executor was debited with one sum or another sum, for income received; since the debit, whatever it might be, was about to be immediately counter-entered, (as it in fact is,) by the credit of a precisely corresponding sum, as "paid to, or for account and by order of, the widow." It was only desirable to state a sum, that would look creditable, and also probable, with reference to the stocks mentioned as held by the executor; and the surest guarantee for the probability of the statement would, of course, be, to make a pretty close estimate of the actual dividends, which those stocks had paid. But however immaterial the sum may have been, then, it is very material,

RECAPITULATION.

Suffolk Insurance Company, amount of Dividends,	-	-	\$11,900 00
Suffolk Bank,	"	"	5,200 00
U. S. 7 per cents,	"	"	8,711 11
U. S. 6 per cents,	"	"	2,580 00
Boston Manufacturing Company, 1820 to 1825, on 18 shares,	-		21,656 25
" " 1826 to 1844, on 39 "			50,115 00
Merrimack Manufacturing Company, 1825, on 68 "			11,900 00
" " 1826 to 1836, on 73 shares,			89,790 00
" " 1837 to 1844, on 71 "	-		73,130 00
Total amount of income by the foregoing estimate,			\$274,982 36
Amount of income according to the account of 1844,			\$274,686 36
Difference,	-	-	296 00

now, in testing the reality of the account, and the truth of the "Reply," to know how that statement of income was arrived at. I show one mode, in which it may, easily, and naturally, have been reached. My statement, made up in that mode, embraces all the income, which was, in fact, derived from all the stocks known to have been held by Mr. Boott, (except as guardian or trustee for the F. Boott family,) within the times, for which he is known to have held them, and during the entire period of the executorship. The sum, so ascertained, is found to correspond almost exactly, with the sum stated in the account under the head of income. Now, if there was any *other* income, intended to be included in that statement, it is incumbent on Mr. Lowell to show what it was, whence it could have proceeded, and how it was computed. Should he fail to do that,—and, thus far he has shown no such thing,—the truth, both of the account and of the "Reply," may safely be tested by the presumption, on which I now proceed, that his statement, and my statement, of the sources of income, and the amount of income, so far as our respective statements go, are substantially the same. If this be so, I ask, How can Mr. Lowell venture to intimate, in his "Reply," and lead his readers to infer, that one sixth of "the gross income of all the manufacturing stock" *belonged to Mr. J. Wright Boott*, personally, when the *whole* of that income is needful to make up the sum, which the account declares to have been "Income received on the trust fund for the widow, from March, 1818, to November, 1844," and to have been "paid," accordingly, "to, or for account and by order of, the widow?"

If Mr. Lowell, in preparing this part of the account, really allowed for one sixth of "the gross income of all the manufacturing stock" as belonging to Mr. Boott, he must be ready, now, to show "gross income" received, to the amount of \$330,000, instead of \$275,000,—which latter sum would be the five sixths belonging, on that hypothesis, to "the trust fund for the widow." If he fails to show income received to the amount of \$330,000, from property, which I cannot make out to have yielded more than \$275,000, he must at least

admit, that Mrs. Boott's income, when rated, in the account, at \$275,000, is there set down at *one sixth more* than it ought to have been, and that the credit of the account, for near \$275,000 paid "to, or for account and by order of, the widow," is not only "fictitious," but positively false, to the extent of more than \$45,000; or else he must admit, that the suggestion of the "Reply," that one sixth of the \$275,000 *belonged to Mr. Boott*, was merely thrown out for effect, without the slightest foundation in fact. He shall choose, as he pleases, among these alternatives.

Besides, if \$275,000 really represents the total income from the stocks constituting the trust fund, (which, when we look to the stocks, and to the actual dividends upon them, seems to be an unquestionable fact,) we cannot help asking, with reference to the truth of the account, what became of the aunts and their income? It is admitted, by the "Reply," that the original trust fund of 1818, amounting, exclusive of premiums paid for the stocks, to exactly \$111,111 11, was intended to cover *their annuities*, as well as Mrs. Boott's. [L. pp. 24, 52.] They both lived a number of years. If I am right as to the dates of their respective deaths, they should have received from their annuities, in the aggregate, some where about \$8000. Now there is not a word of any such payment in the account. Are we to understand, then, that Mr. Boott wholly omitted to pay those annuities to any body? or must we understand, according to the literal statement of the account, that he paid them to *Mrs. Boott*, instead of the aunts? Is this entry of the account, "fictitious"? or is it a solemn reality? Did Mr. Boott pay any thing to the aunts? or did he not? Did he first subtract, as the "Reply" suggests, one sixth of the gross income, *as his own*, before he stated \$275,000 to be the "income received on the trust fund for the widow"? Or was \$275,000, or thereabouts, the actual gross income of his whole stock investment, as I suggest,—all, necessarily, representing his trust funds, as I have abundantly shown,—and was he, neverthe-

less, unfortunately compelled to use near \$66,000 of that income for the payment of his own debts?

One or two other statements of the "Reply," in this connexion, deserve a passing notice.

Having asserted that "the gross income of all the manufacturing stock did not exceed \$12,000 a year," and that Mr. Boott had a "perfect right to retain one sixth part of the income of those stocks," on the ground that it was his own, the "Reply" goes on to say:—

"Mrs. Boott's income, *therefore*, during the thirteen years in question, [from 1831 to 1844,] did not exceed \$10,000 a year. A reasonably large income, too, from a fund of \$100,000.

"From this income Mr. Boott remitted to his mother about \$6000 a year; not \$5,000, as Mr. Brooks, with his usual accuracy, asserts. I have before me a precise statement of those remittances, and the average is between \$5,900 and \$6,000 a year. *In addition to this, Mrs. Boott's establishment in Bowdoin Square was to be kept up.*" [L. p. 93.]

"To do this, as well as pay Mrs. Boott's taxes, and such sums as she might order to be expended here from time to time, sums, to my knowledge, often considerable, there was left but \$4,000 a year." [L. p. 93.]

Reference is then made to an estimate of Mr. William Boott, which, it is said, "supposes the expense of the establishment and the taxes to amount to about \$4300 a year." [L. p. 99.]

And the conclusion is:—

"At all events, it is perfectly obvious that Mr. Boott could have derived nothing from this source [Mrs. Boott's income,] to enable him to pay the \$167,000 of debt, and Mr. Brooks's fancied deficit of \$63,000 into the bargain." [L. p. 94.]

How Mr. Lowell disposes of the debt and the deficit I have already shown. [Ante, Ch. 25, Ch. 26.] The argument, now to be dealt with, is, that there was no opportunity to apply any part of the income from the trust funds to Mr. Boott's debts, whether more or less, for the reason that it was all, necessarily, absorbed in other expenditures, for Mrs. Boott's own purposes.

I shall answer the argument by showing, partly from the

"Reply" itself, and partly from other evidence, which Mr. Lowell can not question, that, after satisfying every other requisition upon Mrs. Boott's income, suggested in the "Reply," there is no way left, to account for the whole expenditure, except by appropriating to Mr. Boott's debts, "during the thirteen years in question," just about so much of his trust funds, as I have already shown, in another way, must have been so appropriated.

The thirteen years, spoken of, are, in truth, a little more. They run from the end of May, 1831, to the middle of November, 1844.

Mr. Lowell gives his readers to understand, by the passages above extracted, that, during that period, about \$6000 a year was remitted to Mrs. Boott, and that the expense of an establishment in Bowdoin square was kept up at the same time, which, with taxes, and other expenses for Mrs. Boott, alluded to in general terms, but not specified, is said to have taken up \$4000, or, according to the largest estimate, \$4300, a year. This is stated as a payment for Mrs. Boott, in addition to the \$6000 a year, which was remitted to her in England. With reference to the whole thirteen years, the "Reply" says:—

"In the face of this notorious fact, that Mrs. Boott was keeping up a *double establishment*, in England and in this country, on an income of \$10,000 a year, Mr. Brooks does not hesitate to style the charge of \$275,000 paid to, or for account and by order of, the widow, during twenty-seven years, "fictitious." [L. p. 94.]

Now, Mrs. Boott was, herself, *living in this country*, during the *first five years and more* of this period. She went to England in September, 1836. So says the "Reply." [L. p. 56.] There was no expense, then, of a *double establishment* during those *five years* of the period, and the statement of the "Reply" is, so far, positively untrue. I have already had occasion to state, that Mrs. Boott, after the embarrassments of the trust fund were discovered in 1830-1, was advised, by Mr. Kirk Boott and by myself, of the necessity of curtailing her expenses, and that she in fact practised, from that time till she went to England, a rigid economy, considering the nature

of her establishment. I have heretofore estimated her expenditure, during this time, and I think, liberally, at \$5000 a year. [Ante, p. 421.] This would amount, for the five years and three or four months, from May, 1831, to September, 1836, to \$26,600.

In the next place, the amount remitted to Mrs. Boott, after she went to England, is stated above, roundly, at about \$6000 a year, and "a precise statement" is said to show it to have been "between \$5900 and \$6000 a year." I shall have occasion to advert to this again. At present, I will only refer the reader to another part of the "Reply," in which is given the "precise statement" of the aggregate amount remitted to Mrs. Boott, viz. \$43,037 02. [L. p. 56.] It is true, that this is said to have been from September, 1836, to December, 1843; and the date of the probate account, which terminates the series of thirteen years, is November 18, 1844. But, after December, 1843, there were no dividends paid, by either the Boston, or the Merrimack, Manufacturing Company, (the only sources of income,) from which a remittance could have been made, until April and May, (or June,) following; and, at that time, I had taken the stand, which required a change of the trusteeship, involving, necessarily, a settlement of the executor's accounts; and it will be seen, presently, that Mr. Boott and Mr. Lowell were sensible of this necessity, and were then *acting* with reference to it. No pecuniary means, that might accrue, could be spared under such circumstances. They were all needed to enable Mr. Boott to settle as good an account as possible, without leaving Mr. Lowell unpaid. I shall not believe, therefore, until I see a "precise statement" to the contrary, that one dollar was remitted to Mrs. Boott, in that state of affairs, from December, 1843, until after the probate account was finally settled in December, 1844. Indeed, it will be seen, that, November 17, 1844, Mrs. Boott wrote a letter of complaint, respecting her deprivation of income, which must have been founded on the fact, now suggested, that no remittance had recently been made. [B. App. p. 45.] It will be noted, too, when we come to it, that

the "Reply" is extremely careful to stop its report of remittances *exactly in the month of December*, 1843. I think, therefore, we may safely set down the aggregate of all the remittances, within the thirteen years now in question, at the sum which the "precise statement" names; viz. \$43,037 02.

In the third place, for the expenses of the establishment here, including taxes, and the other unnamed et ceteras, whatever they may have been, I am content to take, for the eight years from September, 1836, to November, 1844, the largest sum suggested in the "Reply;" namely, \$4300 a year, amounting to \$34,400.

Finally, the sum, which I have before mentioned as the amount of private debts paid by Mr. Boott, during these thirteen years, out of his trust funds, was \$65,944. [Ante, p. 434.]

Let us now put these sums together, and see what they amount to, and how they compare with the known means.

Expense of Mrs. Boott's establishment, while at home, from May, 1831, to September, 1836, at the rate of \$5000 a year,	\$26,600 00
Remitted to her, in England, after September, 1836, and before the settlement of the probate account,	43,037 02
	—————
	69,637 02
Expense of the establishment, kept up here by Mr. J. W. Boott, including taxes, &c., from 1836 to 1844, at the rate of \$4300 a year,	34,400
Paid for principal and interest on Mr. Boott's debts, as heretofore shown, [Ante, p. 434.]	65,944
	—————
	100,344 00
	—————
	\$169,981 02

Now, let us see, if the known means do not just about correspond with the foregoing estimate of expenditure.

They were as follows:—

Dividends on seventy-three shares of Merrimack, from May, 1831, to November, 1836, (both inclusive,) as heretofore shown, [Ante, p. 438, note.]	62,780
---	--------

<i>Brought forward,</i>	\$62,780
Two shares sold, in March, 1837, at thirty-three per cent. advance, [Ante, p. 438, note.]	2,660
Dividends on seventy-one shares of Merrimack, thence to November 18, 1844, (which does not reach and include the last semi-annual dividend of that year,) as heretofore shown, [Ante, p. 438, note.]	73,130
Dividends on thirty-nine shares of Boston Manufacturing Company, from May, 1831, (which excludes the April dividend of \$50 in that year,) to November 18, 1844, (which includes the <i>two</i> dividends of that year,) as heretofore shown, [Ante, pp. 437-8, note.]	31,200
	<hr/> 169,770

Any one of the items, in the foregoing estimate of *expenditure*, may well have varied, in fact, from the estimate, by a few hundred dollars. But the estimate of *means* is all made up of recorded facts, respecting which, in the absence of accidental error, there is no room for dispute.

The result, then, is, that the income from the stocks, held by the executor during these thirteen years, and the proceeds of a sale of two shares of Merrimack, sold by the executor, furnished, in round numbers, \$170,000, in cash, to Mr. Boott; and that nearly \$66,000 of this cash, thus traced into his hands, is wholly unaccounted for, unless it were applied to the payment of his debts; which debts, to that amount, in principal and interest, we know were in fact paid, during that period; and for which, it has been shown, there were no means of payment in Mr. Boott's power, except the property, which he held as executor, and the income he derived from it.

And when the questions are, whether Mr. Boott managed well as an executor, or not, and whether there was a balance due to him, or not, from his father's estate, at the time of the stating of the probate account of 1844, and whether Mrs. Boott did, or did not, receive from him, as the account pretends, the whole income, to which she was entitled, it is curious to observe, that, of the \$170,000 of cash, above traced to the executor's hands, less than \$70,000 appears to have gone directly to Mrs. Boott's own use, while \$100,000 went, mainly, to the use of *Mr.* Boott; for the establishment, kept up here, after 1836, whether we choose to *call* it Mr. Boott's,

or Mrs. Boott's, was certainly more for his benefit than hers; and the residue of the money went to the payment of his debts.

The real truth, therefore, at which we arrive, is, not only that the greater part of Mrs. Boott's *income* was, for thirteen years, applied by Mr. J. Wright Boott to his own use, (not wantonly, but because it was a *necessary consequence* of the state, to which former mismanagement had reduced his trust funds,) but that he, also, found himself compelled, when dividends failed, as they did in 1837, *to encroach upon the principal* of the trust fund itself, by selling two shares of the Merrimack stock, and using the proceeds in such manner as his own necessities, and those of his mother, (occasioned by him,) may, at the time, have required.

Is it not, then, a most extraordinary circumstance, that Mr. Lowell, well knowing every fact, which has now been exhibited to the reader, should have had the singular boldness to have published under his name, and in so imposing a style, the statements on this part of the case, which his "Reply" is found to contain? The reader must, as yet, be utterly at a loss to account for it. Until he sees the whole case, it would be somewhat imprudent, perhaps, to attempt to account for any thing. I only ask him to ascertain the facts, as he proceeds.

CHAPTER XLIV.

PRETENCE OF AUTHORITY FROM MRS. BOOTT TO APPLY HER INCOME TO THE PAYMENT OF MR. BOOTT'S DEBTS.

I have already cited, from the "Reply," the passage, which sets up for Mr. Boott the justification of a pretended ownership of one sixth of the stocks; and we have looked, as Mr. Lowell requests, "a little more narrowly" at the evidence on this head, and have seen what it leads to. Another passage, deserving brief comment, is as follows:—

"The only other imputation, that I am aware of, brought forward by Mr. Brooks, in this connection, is, that Mr. Boott expended or appropriated his mother's income *without her knowledge or consent*, and this in the face of her own discharge, *which asserts the very contrary*." [L. p. 75.]

The discharge, here alluded to, was printed by me in my former pamphlet. [B. App. p. 38.] It does not *assert* that, which Mr. Lowell says it *asserts*,—at least, not in direct terms. This is only Mr. Lowell's peremptory mode of stating his own inference and construction. Mine are different.

The paper was executed in London, May 29, 1844. This, it will be observed, was nearly six months before the account of November 18, 1844, was presented in Boston; and Mr. Lowell strenuously insists, that "these accounts were presented at the probate office *as soon as they were made up*." [L. p. 31.] He refers, in proof of it, to a letter of Mr. C. G. Loring, printed by me, [B. App. p. 43.] in answer to one from Mr. William Boott, dated November 7, 1844, in which Mr. Loring, upon such information as he had, says, "The accounts of your brother *have not yet been made up*; though *I believe* that the *materials* are now all at hand." [L. p. 32.] The discharge, therefore, was a discharge made *in anticipation* of a

probate account, *about to be prepared*, and not on *view* of the particular account, which was, afterwards, in fact presented.

The discharge itself also recites, that, "by reason of the unlimited confidence always existing between us, the settlement of *periodical accounts* has not been thought necessary, and, *as far as I am concerned, never would be.*" [B. App. p. 38.] It is, thus, apparent that the discharge was given, not only without sight of the *particular account*, which it was used to pass, but without sight of *any previous accounts*. They had never been required, or rendered, in consequence of the "unlimited confidence" between the parties.

It is true the instrument does, also, recite, that

"My beloved son John Wright Boott, of said Boston, Esquire, was appointed sole executor of said will, and as such, and by virtue of the provisions thereof, became, and has since continued to be, the trustee of said fund of \$100,000, and has fully and faithfully paid me, *or appropriated and accounted to me, for all the income thereof*, to which I have been, or am, in any wise entitled, *to my entire satisfaction and approval.*" [B. App. p. 38.]

But, if no accounts had been ever rendered or stated, which I aver, and the discharge itself admits, how did Mrs. Boott know what her fund was invested in, or what the income from it had been, or in what manner that income had in fact been appropriated? All she could *know* would be, that she had received a certain sum, yearly, as and for the income of her \$100,000; and the sum, so received, she presumed to be the *whole* income, to which she was "in any wise entitled;" and this is all she really means, when she says that her son had *accounted* to her, for all the income, to her "entire satisfaction and approval." What else *can* she mean, when she declares that *accounts* had never been thought necessary? What, then, does the discharge, with these recitals,—drawn up here in Boston, before an account had been even called for,* and sent out to Mrs. Boott at London, and there executed by

* The first call was by Mr. William Boott's letter to Mr. J. Wright Boott, June 3, 1844. [B. App. p. 39.] The date of Mrs. Boott's release, in London, is May, 29, 1844.

her, *in anticipation* of such an account as *might* be presented, and for the purpose of passing *any* account, that *should* be presented,—what does it amount to, more than a declaration, by Mrs. Boott, of her “unlimited confidence” in her “beloved son John Wright Boott?” How can Mr. Lowell, fairly, regard this as an *assertion* by Mrs. Boott, that Mr. Boott had *not*, previously, “expended or appropriated his mother’s income, *without her knowledge or consent?*”

The fact, which I aver, is, that Mrs. Boott never knew anything of the true state of her property, or of the use made of it, in that respect. I infer this from repeated conversations, which I had with her, before she left this country. Does Mr. Lowell mean to have it understood, that she knew, in 1830 and 1831, the true posture of affairs, and that the position of her trust fund, *then*, met her “entire satisfaction and approval”? Mr. Kirk Boott, certainly, did not think that she was aware of it. His letters prove that. It is true, that his letter of May 22, 1831,—which suggested an assignment of Mr. J. Wright Boott’s property, but threw upon me the responsibility of deciding what should be done,—agrees to “abide by and acknowledge,” as his own act, whatever I might conclude upon, “provided my mother is made acquainted with the state of affairs, and acquiesces in any course, you will recommend.” [Ante, p. 283.] But the course, I in fact adopted, of merely obtaining a transfer from Mr. J. Wright Boott, individually, to Mr. J. Wright Boott, as executor, of all the property, which circumstances would allow to be so transferred, dispensed, in my judgement, with the necessity of following out Mr. Kirk Boott’s suggestion. He, afterwards, agreed with me, that there would be no advantage in communicating the particulars of that transaction to Mrs. Boott; and the present inquiry relates only to the use made of the income of the property *after* that event. When and how, then, did she first become informed, that her income was paying her son’s debts? She was told, generally, by Mr. Kirk Boott and myself, in 1831–3, that her property had been reduced and had become embarrassed, and that it was necessary for her to live with great economy. She did so, till she went to

England, in 1836 ; after which time a certain limited sum was annually remitted to her ; and that, I believe, to have been all she ever knew of her income, or of its appropriation, unless for the expense of an establishment, still kept up here by Mr. Boott, at the family mansion. This she was, of course, aware of, although she may not have known the amount, of the expenditure, nor from what fund it all came. But appropriation of her income to the payment of *Mr. Boott's debts*, I believe to have been a thing she never dreamed of. Indeed, it is hardly possible that she should have been cognizant of such a fact, without its having ever been alluded to in her many confidential conversations with Mr. Kirk Boott, from whom I should have heard it, and with me, respecting her pecuniary means and prospects. She, certainly, never was told by *us* of the *cause* of her narrowed circumstances. By whom else could she have been told, before she left this country ? Does Mr. Lowell mean to suggest, that she became informed of the fact, while in England ? If so, it was by letter, of course. Let him produce the evidence, then ; for he tells us, that the letters to members of the family in England, have been sent thence to him, and are in his hands. [L. p. 128.]

But Mr. Lowell endeavours to make Dr. Francis Boott, of London, a witness to this point, as follows :—

“ Whatever may have been the state of Mr. Brooks's information on this point, Mr. William Boott, at any rate, well knew the contrary ; for Dr. Francis Boott, of whose family Mrs. Boott has been for the last ten years an inmate, in a letter to his brother William, dated April 15, 1845, *expressly asserts the contrary*.

‘ No one,’ he says, ‘ who knew Wright, and was free to let his own generous sentiments have fair play, would accuse him of a dishonorable use of his trust. I scorn the imputation. He might have advocated a greater economy ; but *he had his mother's sanction for the expenditure, year by year* ; and if she did not insist on saving, the fault is hers.’ ” [L. p. 75.]

Now Dr. Francis Boott, living in London from 1818, or thereabouts, to the time of the writing of that letter, knew no more of the state of affairs here, except as it may have been represented to him by different members of the family,

and by Mr. Lowell, than his mother did. He knew nothing of the transactions known to Mr. Kirk Boott and myself. He knew nothing of Mr. J. Wright Boott's former pledges of the property, constituting the trust fund, which pledges, necessarily, entailed upon him this use of the income, as his only means of extricating the trust fund, by degrees, from those embarrassments. Dr. Boott could not have known either the exact amount of the income of the trust fund, or the particular manner, in which it was appropriated ; and, consequently, could not have known whether his mother sanctioned the expenditure or not, unless he means that she sanctioned it by mere acquiescence, without knowledge or inquiry. Besides all which, I infer from these detached sentences of his letter, extracted by Mr. Lowell, without even the detached sentences of the letter from Mr. William Boott, which Dr. Boott intended to answer, that Dr. Boott was referring, in the passage above cited, to a complaint, from Mr. William Boott, of the unreasonable expense of keeping up an *establishment* here, mainly for Mr. J. Wright Boott's personal accommodation, and *not* to a complaint of his appropriation of his mother's income to the payment of *his own debts*.

This seems the more probable from the fact, that Mr. William Boott's complaints were confined to the former head, so far as appears by detached sentences from other letters, cited elsewhere, by Mr. Lowell. Thus we are told, "Mr. William Boott, in a letter to Dr. Boott, of December 31, 1844, styles it 'the most expensive bachelor establishment in Boston.' " [L. p. 93.] Again, "Mr. William Boott himself, in a letter to Mrs. Ralston, of March, 24, 1844, says: 'The expense of the establishment, added to the interest of the money, for which it [the estate] would sell, and the saving in taxes, will make up about \$7000 per annum.' " [L. p. 94.]

When Mr. Lowell gives out, therefore, in reference to Mr. J. Wright Boott's use of the income of the trust fund for his own debts, without his mother's knowledge, that Dr. Boott "expressly asserts the contrary," and cites, in proof of it, the foregoing language, extracted from a letter of Dr. Boott, I say, in answer, in the first place, that, if Dr. Boott intended

to make such an assertion, he made an assertion respecting a matter, on which he had no means of information; in the next, that I suspect Dr. Boott's language relates to a different subject, and that he is made, by Mr. Lowell, to assert that, which he never did assert.

But, on this point, and many others, it is impossible to see, with certainty,—from a few words of quotation, scattered about by Mr. Lowell, and said to be taken out of a correspondence, not exhibited,—the true meaning and application of such small detached portions, divested of their context; while the opposite party is deprived, not only of the benefit of that context, to explain what is cited, but deprived, also, of all opportunity to cite any other portion of the same correspondence, which might make against Mr. Lowell's argument. This seems to be systematic. And it is curious enough, that Mr. Lowell, in addition to the account books of Boott & Lowell, and to all the books and papers of Mr. J. Wright Boott, which have come to Mr. Lowell's hands, as his executor, should have contrived, also, through the influence, which circumstances have given him over Mrs. Boott, and Dr. Francis Boott, and Mr. James Boott, at London, and Mr. Wells and his family, at Cambridge, and Mr. and Mrs. Ralston, at Philadelphia, to have got possession of nearly all the confidential family correspondence!—familiar letters, written, for the most part, in the strictest privacy of intimate relation, of which no copies were usually kept, at least on this side of the water, and of which he uses such little portions, only, as suit his purpose, in the manner above pointed out. How he has happened to obtain this confidence will be seen in the sequel; and, fortunately, I have preserved some original letters, myself, from various members of the family. The use, which Mr. Lowell makes, of the family correspondence, by their permission, will compel me, reluctantly, to exhibit some of these letters in another part of this case. I shall do it abstemiously, but also fairly, by printing *the whole* of any letter, which I may find occasion to quote, or at least *all that bears upon this controversy*, unless it should happen to affect third persons injuriously, who are not already impli-

cated. In that case, I shall still exercise a reasonable discretion in withholding that, which I may not judge to be strictly necessary for my own defence.

I cannot conclude my remarks, on the subject of the misappropriation of Mrs. Boott's income, better, than by an extract from my former pamphlet, the whole answer to which, given in the "Reply," has now been shown to the reader.

"To state the case in another form, let us look at it during a particular period *after* the payment of these principal sums. The income, received by Mr. Wright Boott on the manufacturing stocks, from the time Mrs. Boott went to England, in 1836, to the time of the stating of this account, in 1844, could not have been less than \$100,000. During that period of eight years it is known to Mr. Lowell, as well as myself, that the regular remittance to Mrs. Boott was \$5000 per annum, amounting to about \$40,000. The other \$60,000 were expended by Mr. Wright Boott here, and include, at least, \$12,000 paid to Mr. Lowell himself for interest." [B. p. 107.]

This, by the way, turns out to have been a great under-statement of the amount paid to Mr. Lowell. It does not include the \$21,000 debt, and the interest upon it, which, it now appears, Mr. Lowell held derivatively from Mr. Sturgis, and of which the greater part, at least, must have been paid off after 1836. Instead of \$12,000, paid to Mr. Lowell after this date, I should have said, nearer \$40,000. My former remarks proceeded as follows :—

"Can these expenditures and appropriations, for the payment of his own private debts and the support of his own establishment, be said to be, in any just sense, a payment "*to, or for account of,*" the widow? Were they by her "*order,*" or even, *at the time*, made known to her? I presume Mr. Lowell will not pretend it, at least so far as payment of debts is concerned. Indeed, Mrs. Boott's release, executed at London, in May, 1844, states the fact, that there were *no accounts* stated and settled between them, by reason of 'the unlimited confidence' she reposed in him [Mr. Boott.] The account under consideration, therefore, is manifestly made up upon a mere theory, in this particular. All the income, Mr. Wright Boott received, was from the manufacturing stocks in two companies, whose affairs were intimately known to Mr. Lowell, and the number of shares held by Mr. Wright Boott in each, or by holders under him, from time to time, and the amount of dividends paid, were easily ascertained from their books. His *receipt of income*, therefore, was to be reached by computation, with reasonable accuracy. His *disposition of it*, on the other hand,

was not to be ascertained, except so far as the payments passed through Mr. Lowell's own hands, because he *never had either books, or vouchers, to show it*, as Mr. Lowell will not deny.

But the theory of the account is, that all the income, which ever came to the executor's hands, belonged to Mrs. Boott; that she tacitly permitted her son to use it as he pleased; and finally, in May, 1844, being applied to for a general voucher to pass such accounts as he might present to the probate court, she, without seeing the accounts, executed a general release of all her claims against him, whatsoever they might be, and so ratified all his appropriations of her own income to his own use. But, although Mrs. Boott may have had the right to give away the whole income if she pleased,—and her willingness to forgive a large debt to her son, for the sake of passing his accounts, may have been equivalent to that,—how does it *justify* those previous appropriations to his own use, and to a very large extent, *without* her authority, or knowledge, *at the time?* The party chiefly, or most directly, interested, may have been willing, afterwards, to overlook it, from motives of affection,—but the fact is not the less evidence of his mismanagement, and unfitness to be an agent and trustee. It was a striking fact, which could not be overlooked by those who knew it, and were called upon to decide, for others, whether \$46,000 *more* of trust money should be placed in his hands.” [B. p. 107.]

To this I ought to add, that I have no belief that Mrs. Boott has been made aware, *to this day*, of the fact, that a single dollar of her income ever went to pay a debt of Mr. Boott's, unless by the intimations of Mrs. Brooks's letter of December 11, 1844, before referred to; [B. App. p. 46. and Ante, p. 161.] and these, as will presently be seen, were overborne, in Mrs. Boott's mind, by statements from Mr. Lowell.

Respecting the amount of the “regular remittance to Mrs. Boott,” which I speak of above, as \$5000 a year, Mr. Lowell says a word, to which I have a word to say in answer.

I extract, again, from the “Reply,” as follows:—

“Mrs. Boott's income, therefore, during the thirteen years in question, did not exceed \$10,000 a year.* A reasonably large income, too, from a fund of \$100,000.

From this income, Mr. Boott remitted to his mother about \$6,000 a year; not \$5,000, as Mr. Brooks, with his *usual* accuracy, asserts. I have before me a precise statement of those remittances, and the average is between \$5,900 and \$6,000 a year.” [L. p. 93.]

* Mr. Lowell means, of course, *after deducting* the \$2000, which he calls Mr. Boott's. Even then he is short of the truth. The income from the trust property, during that period, exceeded \$12,500 a year.

Elsewhere, he cites a letter from Mr. William Wells, whom he avers to be a good witness to affairs, which, I said, he was not acquainted with. In the letter cited, that gentleman writes,—“nor does it look like a negligent manager, that, during the last *eight* years, [the letter is dated August 23, 1844,] many of them so disastrous, he has been able to remit to his mother *more than \$7000 per annum*, besides providing for the expenses of her house in Boston.” [L. p. 56.] To this, Mr. Lowell feels obliged to append the following note:

“Mr. Boott remitted to his mother in the *seven* years from September, 1836, to December, 1843, £8810 sterling, which cost him, here, \$43,037 02, or about \$6,000 per annum; *not* \$7,000, as Mr. Wells supposed.” [L. p. 56.]

Mr. Wells supposed it “was *more than \$7000*,” and “during the last *eight* years,” which Mr. Lowell, while he cites him as authority, is obliged, thus, to correct, and does not correct so fairly as he might, after all.

Now what I stated, concerning Mr. Boott’s “regular remittance” to his mother, I stated upon no other information than that formerly given to me by Mr. John A. Lowell. If there was any want of “usual accuracy” in my statement, the inaccuracy came from himself. But, I believe, in that instance, there was none. If Mr. Lowell would have the goodness to produce that “precise statement,” which he had before him when he wrote, I believe the reader would find that the “*regular remittance*” was just about what I stated. But there was one year, when the total income, from all the stocks belonging to the executor, was not much short of \$30,000, in consequence of an extraordinary dividend of \$370 a share, made by the Merrimack Manufacturing Company. And in that, or the following, year, (Mrs. Boott having complained much of her straitened circumstances, living in London, with only \$5000 a year, and with numerous calls upon her,) Mr. Boott found means to make an extra remittance; which may, perhaps, have brought up the “*average*,” for the *seven* years, to about what Mr. Lowell states it. In general, five per cent. upon \$100,000 was all that went, directly, to

Mrs. Boott, for her own expenditure. At least, so I was informed by Mr. Lowell.

As to the figures, exhibited in the note above cited, to make out about \$6,000 a year, they are, plainly, over-lapping statements. That is, the period, stated in the note, runs from *September*, 1836, to *December*, 1843,—neither *seven* years, nor *eight* years, but just *seven years and a quarter*. May it not serve to account for this, that, in the months of *October* and *November*, 1843, dividends accrued, of \$30 a share in the Boston Manufacturing Company, and \$100 a share in the Merrimack Manufacturing Company, which, upon the number of shares stated in the account of 1844, amount to \$8250? [Ante, p. 438, note.] This large sum was received by Mr. Boott, or by Mr. Lowell for him, within that *last quarter* of a year, which is thus tacked on to the preceding seven years; and not one word is said about the amount of remittance from December, 1843, to the date of the probate account, (November 18, 1844,) within which time I have, already, stated my reasons for believing that *no* remittance was made. [Ante, p. 444.] If Mr. Lowell would have the goodness to state the amount remitted from *September*, 1836, to *September*, 1843, and thence to *September*, 1844, we should better see the amount, for both seven years and eight years. At present we see neither. And if he would exhibit the “precise statement” itself, we should then know what the remittance *regularly* and *usually* was,—if there was, in truth, any regularity in it, of which I know nothing, except as I have been informed by Mr. Lowell. If, as I infer, there was no remittance between December, 1843, and November 18, 1844, (the amount of previous remittance being, as we are now told, \$43,037 02,) the average, for the whole eight years and two months, including the extra remittance above mentioned, was about \$5300 a year. But does Mr. Lowell, ever, in this case, exhibit the *whole* of any thing, unless it happens, as he thinks, to make, *wholly, in his own favour?*

One other question I have to ask of Mr. Lowell. I find, from the books of the two companies, that the aggregate of

the dividends, which accrued, between September, 1836, and November, 1844, to the date of the probate account, on the thirty-nine shares of Boston Manufacturing Company and the seventy-one shares of Merrimack Manufacturing Company, held by, or for, Mr. Boott, as executor, amounted to upwards of \$90,000.* Of this, we are told, \$43,000 was remitted to Mrs. Boott. *What did Mr. J. Wright Boott do with the other \$47,000*, besides maintaining himself at the house in the square?

CHAPTER XLV.

THE ACCOUNT, COMPARED WITH OTHER EVIDENCE RESPECTING THE ESTATE LEFT BY MR. BOOTT'S FATHER. REPRESENTATIONS OF A DIVIDEND OF \$20,000.

I have, thus far, treated the probate account upon the hypothesis that Mr. Boott had, originally, nothing to account for, beyond that, which he is therein charged with.

I have treated it upon the further hypothesis, that he had really paid to the heirs, though not with equality, neither more nor less than \$90,000, as the account claims; and that, after crediting the amount of capital distributed, nothing remained to be accounted for, except the particular trust funds, required by the will to be kept up. I have even allowed this accountability to be reduced to the single fund of \$100,000 for Mrs. Boott,—which Mr. Lowell admits to have been an outstanding trust at the date of the account,—and to the income of that fund, so far as its investments are stated.

Yielding, for the moment, all these points, and taking the account as it stands, I have shown,—and have shown it, generally, by setting Mr. Lowell, in one place, against Mr. Lowell in

* See the particulars in the note to the last chapter. The April dividend of the Boston Manufacturing Company, in 1836, (\$30,) is, of course, to be excluded.

another,—that the account of 1844, with its pretended “cash balance due to the executor,” is, essentially, a fiction ; and that, so far from any thing being due, in 1844, from the estate to Mr. Boott, the truth is, that, after all other means, formerly possessed by Mr. Boott, were applied, so far as they would go, to the payment of his other debts, this trust fund of \$100,000, charged, as it was, with those debts, remained deficient, in 1831, by more than fifty per cent.; that, according to the account of November 18, 1844, it was, still, deficient by the sum of \$3715; and that the apparent improvement of its condition in 1844, compared with its condition in 1831, arises from two causes only ; first, that Mr. Boott had *paid off* a large part of his own debts, which encumbered the trust property, out of the *income* of the trust property itself ; and secondly, that the stocks are charged, upon a false principle, *beyond their value* at the time Mr. Boott first made them, specifically, trust property, by a proper transfer. But I have also shown, that, take which principle of valuation the reader pleases, whether mine or Mr. Lowell’s, the result is the same, except in degree. In either case, the trust fund was largely deficient in 1831, less so in 1844, but still deficient ; and that the difference, in the amount of deficiency at the two dates, arises, solely, if we value the property at its alleged cost to Mr. Boott, from the gradual payment of Mr. Boott’s debts, out of the income of the trust property itself.

This, surely, would be evidence enough of gross mismanagement, if I should not go a step further. But, in my former pamphlet, I stated my belief, that,—besides the \$100,000 trust fund, which, in 1844, should have been entire, and indeed should have been much augmented by rise in value of the property composing it, and besides the \$90,000 claimed to have been paid to the heirs,—there was, but for the effect of the release of 1833, which the “Reply” repudiates, a large remaining indebtedness to them, or some of them, for property, not appearing in this account, which had come to the hands of the executor, or for which he, being also the surviving partner of his father, had made himself justly chargeable and accountable. Mr. Lowell not only denies this, but contends

that, by distributing among the heirs \$90,000, Mr. Boott, in fact, *over-paid* them by the sum of about \$3700. [L. p. 40.] This, then, is a material part of the issue between us. If Mr. Lowell's premises were all correct, I have shown, that, when connected with other facts, about which there is no room for dispute, they lead to the conclusion that *no balance was due from the estate to the executor, and that the trust fund was deficient, in 1844, by at least \$3700.* This deficiency is proved by Mr. Lowell's own figures, made with reference to a different question, notwithstanding that the fact is, in terms, denied by him, when that is the point, either directly spoken of, or incidentally alluded to, in the "Reply." [L. pp. 40, 59, 195.] Such a deficiency, it is true, might have arisen, according to Mr. Lowell's premises, from the pretended over-payment of that amount to somebody. If, on the other hand, my views are correct, there was not only no such over-payment, but there was a large sum, which the executor should have paid over to some of the heirs, and never did pay, as well as a much larger deficiency on the particular trust fund, than this account, after the most careful analysis, discloses.

My view of the accounts, thus far, has taken, for its point of departure, the indisputable state of all the property held by Mr. Boott in 1830, according to the memorandum in his own hand-writing. Thence, it has all been traced and accounted for, up to the time of the probate account of 1844; and thus, by comparison with other proved or admitted facts, the extreme defectiveness and error of the account has been, in one mode, and to a certain extent, demonstrated. The remaining view, by which this will be further demonstrated, depends upon facts anterior to the disclosures made by Mr. Boott to me in 1830. This series of facts goes back to the time of the testator's death, in 1817, and even beyond that.

Of the business transactions, prior to 1830, I had little contemporaneous knowledge. My former statement, therefore, was composed of certain particular facts, which, though prior to 1830, I personally knew, and of the evidence, which had then come to my knowledge, of certain other facts; from

all which I drew the inference, that, instead of \$10,000, only, having become payable from the executor, to each of the heirs, before the release of 1833, as is claimed by the account, about \$20,000 ought, before that time, to have been paid to each of them. The "Reply" attacks the premises, on which this inference depends, by denial in part; explanation, in part; ridicule, in part; and, in part, by a counter-statement of other alleged facts;—all which I now propose to consider.

In the first place, it is apparent that Mr. Boott, senior, at the date of his codicil, which was little more than one year before his death, estimated his own property to be sufficient for a much larger dividend, among his children, than Mr. Lowell pretends; for, after having otherwise disposed of nearly \$150,000, (including the mansion-house and store,) he gives the residue of his personal estate equally among his children, and then makes the following provision:—"As I have fixed the time until the 19th of March, 1818, before a division of my estate, according to my will dated Nov. 20, 1813, shall take place, yet my executors are, *within a year* after my decease, to pay to my sons, Kirk and Francis, \$10,000 each, *in part* of what is bequeathed to them, they paying interest for it until the 19th of March, 1818." [B. App. p. 9.] A cautious man, like Mr. Boott, senior, would hardly have directed the absolute payment of so large a sum, soon after his decease, as a *partial payment only*, and in addition to the withdrawal and investment, "*within a year*," of \$111,000 of annuity funds, if he had not himself believed that there would be an ample property, beyond all the contingencies of trade, to give his children *much more* than \$10,000 apiece. Would he have done so, if he had not expected to leave them something like double that sum?

In support of my allegation, that \$20,000, or near it, exclusive of reversions, was the real dividend, which each heir was entitled to, another sort of evidence, relied upon by me, was, that Mr. J. Wright Boott, the executor, had repeatedly said so; and, particularly, that he had volunteered that statement, personally, to me, respecting the portion of Mrs. Brooks, on the occasion of our marriage, May 3, 1821.

I understood, near the same time, from the late Mr. William Lyman, that like information, respecting the amount of the property, had been given to him by Mr. Boott, on the same evening, that being the date of Mr. Lyman's marriage, also. I afterwards learned from Mr. Ralston, that he had been similarly advised, at or about the time of his marriage, which was a year later. I knew from other members of the family, that, while living at home, they always considered themselves authorized by Mr. J. Wright Boott, to expend, if they pleased, \$1200 a year, as representing the interest of their property.

The information, which I received from Mr. William Boott, of his brother's statement to him, after his return from Europe, in 1827, and his consultation with me, grounded upon it, have been already mentioned. [Ante, p. 184.] I was also consulted, shortly before Mr. J. Wright Boott's disclosures to me, in 1830, by both Mr. Lyman and Mr. Ralston, who had, long before, received \$10,000 each from Mr. J. Wright Boott, upon the question, what they should do, and in what manner they should approach Mr. Boott, with a view to obtain from him the remaining \$10,000, which, they had been told, was due to each of them. I advised them to make a direct and personal application to him. They took that advice, and, as I was told, quoted me for it, in their interview with Mr. Boott. This, it may have been, (for I can conjecture nothing else,) which gave to Mr. Boott, at that time, the idea of a *plot to ruin him*, to which *I* was a party, *conspiring* with Messrs. Lyman & Ralston. So he stated to his brother Kirk, who told it to me. [B. p. 38.] The amount of promised dividend had, moreover, been frequently alluded to, before that time, in conversations between Mr. Kirk Boott and myself, respecting the family affairs.

For myself, therefore, I want no other evidence to reduce the case to this alternative. Either \$20,000 was, in truth, the nearest round sum, which represented the just dividend of each heir, (independently of distant expectancies upon the decease of parties then living,) or Mr. J. Wright Boott, without any imaginable motive, misled all his family into that be-

lief, by repeatedly telling them so, and permitting them to act upon that assurance.

The particular instances of this kind of information, which I mentioned, in general terms, in my former pamphlet, were the statement, made directly to me, and the statement, made to Mr. William Boott. I did not, then, suppose it necessary to multiply instances, or to narrate all the circumstances attending those, which I cited.

Those, of course, were all, that Mr. Lowell was bound to answer. I have already mentioned, that he takes no notice whatever of the representation made to Mr. William Boott, as reported by me, at second hand. Respecting my own case, he does not pretend to question that I intended to state the truth, according to my recollection and belief; but he undertakes to give an explanation of Mr. J. Wright Boott's statement to me, which he, perhaps, may have considered equally applicable to that made by Mr. William Boott, though it is apparent that this explanation, if not inconsistent with itself, is, at least, totally inconsistent with the further facts, which I now state. These may, or may not, have been known to Mr. Lowell. Such of them as respect payments and allowances, it would seem, should have been known to him, in consequence of his representing Mr. J. Wright Boott, when absent in Europe. [L. p. 28.] However that may be, I have no belief that any one of the immediate family will pretend to deny them.

But, taking the case as it stood in my former pamphlet, what is Mr. Lowell's explanation? Why, simply, that it is *all a mistake*. He pretends to think that I must have *misunderstood* Mr. Boott at the time, or now *misrecollect* him; and that, if he spoke of \$20,000, as coming to Mrs. Brooks, he *meant* to speak only of the share she would *eventually* inherit, *including her reversions*, and not of a sum then payable, or to be payable, during the life of Mrs. Boott. [L. pp. 52, 53.] Now such a misunderstanding seems next to impossible. This was not a mere casual remark, by Mr. Boott, likely to be misunderstood, or of which the true purport was likely to be forgotten; but a conversation of some length,

and formality, under circumstances calculated to leave an impression. Mr. Boott took me aside, on the evening of my marriage, for the purpose of entering into that conversation, and expressed himself to the effect, that he hoped, *soon*, to have the pleasure of *paying over* to me \$20,000, for his sister's share of her father's estate. He went on to remark, that the estate had, as yet, never been settled ; and that there were, still, some outstanding debts to be collected in England ; that he did not know that he could absolutely promise quite \$20,000 ; that the amount realized, and the amount certain to be realized, shortly, would make a dividend of from \$17,000 to \$18,000, at least, to each heir ; and he thought it would come up to \$20,000 ; but that this must depend, in a degree, upon the final winding up of certain affairs in England, which he hoped to see soon settled. A good deal more was said, to account for the estate's having remained so long open, and about the provisions of his father's will, appropriating a large part of the estate so that it could not be divided during the lives of the annuitants ; but this was the substance of the information, in what is material to this controversy.

It was so pointed to present prospects, instead of expectancies depending on the lives of annuitants, that I, afterwards, grounded a receipt upon it, when \$10,000 was paid to me, by note, expressly on account. This paper Mr. Lowell can produce, if he pleases. If I am right as to its tenor, it would prove, at least, that my recollections of the effect of the conversation are not of recent origin. But I, fortunately, have it, now, in my power to produce another "contemporaneous exposition," which must set *that* question at rest. It happens, that among the papers of my late father, an original letter, written by myself to him, about a fortnight after my conversation with Mr. Boott, has lately come into my possession, as one of the executors of my father's will.

To explain the fact, I should state, that, shortly before my marriage, my father spoke to me respecting an arrangement of property, which he then contemplated making for my benefit. The amount, he said, he had not determined upon, but would make it enough to enable me to marry ; and, in

that view, he inquired of me what fortune I was to receive by the intended marriage. I was obliged to confess my ignorance on this point. Immediately after my marriage, I left Boston, on a journey, and did not see my father until my return. But, on my way home, I wrote to him, from Brattleborough, the letter in question, dated May 17.

In that letter, bearing in mind my father's recent conversation with me, I was led to allude to my subsequent information from Mr. Boott. In doing so, I took care, of course, as both interest and duty required, not to hold out to my father *extreme* expectations, but to inform him of that, which I thought I could count upon with *certainty*, so that he might govern his own dispositions of property accordingly.

The most of the letter is taken up with details of the journey, and other matters, neither relevant to my present purpose, nor such as would interest the reader. A few sentences, however, in the following extract, (which contains all that bears upon the subject,) will be found highly pertinent.

EXTRACT FROM AN ORIGINAL LETTER.

[Edward Brooks to Hon. P. C. Brooks; dated "Brattleborough, May 17;" post-marked "May 19;" and endorsed, in the hand-writing of the late Peter C. Brooks, "Edward's letter, rec'd May 24, 1821."]

"Our next stage was Greenfield, from whence we came here. We parted company with our friends, the Lymans, at Northampton. They go, I believe, to Portsmouth, and will reach Boston about the same time with ourselves.

On the wedding evening, Mr. Boott spoke to me, for the first time, on the subject of Eliza's property. The estate, it seems, is still unsettled, owing to large debts due in England, which have been very doubtful, and are not yet, altogether, discharged. He says, from the disposition made of the property, BY THE WILL of his father, the children will DIVIDE between \$17,000 and \$18,000 each; which, he thinks, WILL BE REALIZED BEFORE LONG. On my return, I shall have a more full conversation with him on the subject.

We have heard nothing from any of you, since we left home," &c. &c. &c.

The further conversation, which I expected with Mr. Boott, I never had, simply because he never offered me a fair opening; and I soon fell into the family habit of considering him a person not to be obtruded upon in such matters. Nothing

more was ever said by him to me respecting a dividend, until about two and a half years after, when he handed me his note on demand for \$10,000, expressly as a payment *on account* of my wife's share, without a word of further explanation. And I heard nothing more from him about the property, until his disclosure of 1830, when I found it was all gone, except a remnant, not sufficient, under its incumbrances, to construct Mrs. Boott's trust fund.

The foregoing letter, which has thus accidentally come to light, will at least serve as further evidence "to show what Mr. Brooks's reminiscences are worth, after such a lapse of time." [L. p. 80.] If it does not positively prove the statement of Mr. Boott respecting a probability of \$20,000, it at least proves, beyond question, that I understood him, at the time, as holding out the *certainty* of a sum, *soon* to be realized, *and divided*, that would give to the heirs, from \$17,000 to \$18,000 each, instead of \$10,000, which the account and the "Reply" pretend to have been *a little more* than the whole divisible share!

Now what can Mr. Lowell say to this? He can no longer charge me with *misrecollection*; or, at least, not to an extent that can be of any avail for his argument. His case is reduced to one of *possible misapprehension* at the time. It would be pretty remarkable, certainly, if I had misunderstood Mr. Boott, so very widely, on so material a point; for, whether I was about to receive a large sum of money shortly, or only at the remote and indefinite period of Mrs. Boott's decease, and whether the sum, which I was to have in hand, was to be something near \$20,000, or only \$10,000, was, at that time, a matter of no small importance to me; especially since I had reason to believe that it would affect the amount of provision, which my father was proposing to make for my benefit. But it would be remarkable, indeed, if Messrs. Lyman, Ralston, and William Boott, had all, severally, misunderstood Mr. J. Wright Boott in just the same way, in other separate conversations, at other times. Still more remarkable would it be, if the misunderstanding, all round, had extended to the actual payment by Mr. Boott, and reception by several

of his brothers and sisters, of \$1200 a year, or to the right on their part, to call, if they pleased, for that sum, as the income of their distributive shares. And most remarkable of all, that \$10,000 should have, afterwards, been paid to me, and received for by me, expressly *on account*, and not *in full*, of the present distributive share, as, according to the "Reply," it should have been.

When Mr. Lowell, therefore, in the face of these facts, suggests a *misperception*, he is bound to make out, by clear extrinsic proof, an impossibility, or, at least, the highest improbability, that Mr. Boott could, or should, have made such a statement, as I aver he did make; or else to demonstrate, by positive evidence, that the statement was not true.

Let us see how near an approach he makes to either branch of this alternative.

CHAPTER XLVI.

MR. LOWELL'S EXPLANATION OF MR. BOOTT'S STATEMENTS. THE \$10,000 PAYMENT TO ME. THE ARGUMENT DRAWN FROM THE SILENCE AND ACQUIESCENCE OF THE HEIRS.

Mr. Lowell's mode of making out the probability of my having misunderstood Mr. Boott, is this:—

"There can be no reasonable doubt, that, if Mr. Boott ever mentioned the sum of \$20,000, he was speaking of his sister's share of the property, *including* the trust funds."

Let us see if this is not probable.

The house in Bowdoin Square had been appraised, only three years before, at \$24,000.

Suppose Mr. Boott valued it, in 1821,	\$30,000
The trust funds in his hands were then	111,000
The property presently distributable among the heirs, exclusive of the \$11,000 trust fund for his aunts, he probably valued at what it turned out to be,	75,000
	—————
	\$216,000
	—————
This, divided by nine, would give to each of the heirs,	24,000
But Mrs. Brooks had already received her furniture, which had cost certainly not under	4,000
	—————
	\$20,000

So that it is almost certain, that Mr. Boott was speaking of Mrs. Brooks's *ultimate* expectations, and not of the sum presently receivable." [L. p. 52.]

What a curious specimen have we, here, of the forcing of figures to meet a case !

First, the mansion-house is forced into the account, although this was no sum of money, to be divided, at all.

Next, Mr. Boott is forced to value it at, precisely, \$30,000. A little while since, when the object was to rectify Mr. Boott's position in 1830, and to exhibit for him an apparent excess of property, beyond all debts and liabilities, to the amount of \$70,000, the reader has seen, that, in order to prove *that* case, Mr. Lowell, among numerous other assumptions, valued the mansion-house at \$46,000, though it was *then*, (1830,) really worth only about \$30,000. [Ante, p. 254.] But, now, when the object is to extract the sum of \$20,000, exactly, for Mrs. Brooks's share of the estate, including reversions, Mr. Lowell values the same piece of property at \$30,000 ; and he values it at that, for the year 1821, though it had been appraised, but three years before, at only \$24,000, as he admits ; for neither more nor less than \$30,000 would work out this sum, just as \$46,000 was necessary to work out the former sum.

In the third place, Mr. Boott is forced, by Mr. Lowell, to value all the personal property of his father's estate, supposed to be remaining in his hands after having set aside \$111,000 for the particular trust funds, at exactly \$75,000, although the very question at issue is, how much that property was.

Why at \$75,000? Because, says Mr. Lowell, that is "*what it turned out to be.*" How so? It "turns out," *by nothing but the account of 1844*, drawn up by Mr. Lowell, the correctness of which is the whole matter in dispute. In that account, Mr. Boott is charged with \$186,000, only, as received, in money, for account of the capital of his father's estate; from which, deducting \$111,000 for the trust funds, there would remain, it is true, but \$75,000 for distribution; and, of course, argues Mr. Lowell, Mr. J. Wright Boott, who knew the state of the property, must have valued that remainder, in 1821, at what the account of 1844 shows it to have been. But, *when*, does the account say, that he had *received the money*, with which he is charged? The conversation with me, fixed now by an original letter, was in May, 1821; and at *that time, according to the account*, Mr. Boott had received only \$116,783 95. [L. p. 38.] The residue of the admitted receipts is said to have come from Boott & Lowell; at what date, it is true, the account does not tell us; but the house of Boott & Lowell, we are told in the "Reply," did not *begin its existence* till 1822, nor wind up till July, 1824; [L. p. 28.] and the \$70,000, (nearly,) said to have been paid over by that house, is declared to have come from its liquidation of the outstanding affairs of the former house of Kirk Boott & Sons, in which the estate was a partner. [L. p. 38.] Yes; Mr. Lowell ventures to draw so largely on the credulity of his reader as to invite him to believe, that Mr. Boott saw, with prophetic eye, in May, 1821, that, in the course of a future liquidation, by a future house, destined to be established in 1822, he should receive, at last, through that house, from the unsettled accounts of his father's estate, (which could not, legally, have any concern with such a house,) something so near the precise sum of \$69,389 99, that, when added to the five or six thousand dollars, which he is, then, supposed to have had in hand, beyond the trust funds, it would give him the exact sum of \$75,000 for distribution!

"By all these assumptions, as curious as they are manifestly unfair," [L. p. 91.] the arithmetic of the "Reply" succeeds in producing an aggregate amount of property,

which, when divided by nine, (the number of the heirs,) gives, after all, \$24,000, instead of \$20,000, to a share. But, in order to get rid of that extra \$4,000, it is only needful to make a few more assumptions. Accordingly, it is *assumed*, that Mr. Boott *meant to exclude* the cost of Mrs. Brooks's furniture ;* and it is *further assumed*, "without a shadow of evidence," [L. p. 47.] that the *cost* of that furniture was, exactly, \$4000 !

Was ever any thing, with arithmetical figures attached to it, and purporting to be founded on facts, so conjured up out of the regions of pure invention ? Yet, Mr. Lowell concludes :—

" So that it is *almost certain*, that Mr. Boott was speaking of Mrs. Brooks's ultimate expectations, and not of the sum presently receivable." [L. p. 58.]

If this were so, how came Mr. Boott to tell Mr. Lyman, on the same evening, that Mrs. Lyman's share, also, would be \$20,000 ? There was no \$4000 to be deducted for furniture, in her case. How came he to tell Mr. Ralston, in 1822, and Mr. William Boott, in 1827, that they, each, were to have \$20,000 ? Mr. Ralston, at the time of the statement to him, had not received any sum whatever, in furniture, or in any other form ; and Mr. William Boott, if we may credit the "Reply," *had received more than ten thousand dollars* in Europe, on account of his patrimony. [L. pp. 61, 62.]

But I am tempted, by Mr. Lowell's example, to try *my* hand at a little computation in this matter ; though, instead of resting my figures on my own conjectures, I shall rest them on *his admissions*.

Mrs. Brooks was undoubtedly entitled, as a part of her "ultimate expectations," to one ninth of the trust funds ; and these, Mr. Lowell admits, above, were, in 1821, \$111,000 ; of which, one ninth is	\$12,333 33
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* This furniture was treated at the time, as a gift. It was not understood to have been purchased out of her funds ; and had not been delivered to her. Several weeks elapsed before she began to occupy the house, which had been furnished. The cost I never knew. It is probably over-estimated by Mr. Lowell.

<i>Brought forward,</i>	\$12,333 33
She was also entitled to one ninth of the mansion-house, which Mr. Lowell values above, in 1821, at \$30,000. One ninth is	3,333 33
She had received, on account of her share, in furniture, as Mr. Lowell assures us,	4,000 00
And Mr. Boott paid to me, on further account, as Mr. Lowell admits, below, with interest from the day of my marriage, (which was admitting it to be a sum due <i>on that day</i> ,)	10,000 00
Total,	29,666 66

Hence, if so small a sum as \$20,000 was a sum spoken of by Mr. Boott, must we not conclude, from Mr. Lowell's premises, that "it is *almost certain* that he was" *not* "speaking of Mrs. Brooks's *ultimate* expectations"? For, if no more than \$10,000 was to be the true cash dividend, as Mr. Lowell pretends, that sum, added to the other items, which Mr. Lowell admits, would have made Mrs. Brooks's *eventual* share about \$30,000, instead of \$20,000, as the "Reply" desires to make it.

But Mr. Lowell, adverting to his own demonstration above cited, goes on to remark :—

"This view is confirmed by what subsequently occurred. Mr. Boott called upon Mr. Brooks, in December, 1823, and *gave his note for \$10,000, on account of Mrs. Brooks's portion*, and a check for the arrears of interest from the day of the marriage." [L. p. 53.]

That is all true, and just as I stated it. [B. p. 43.] He gave me his note, as Mr. Lowell says, "*on account*" of Mrs. Brooks's portion, *expressly*, and took a receipt from me, in conformity.

But Mr. Lowell asks :—

"Why for \$10,000? If he had paid him that sum in money, it would be intelligible enough why it might be inconvenient to pay up the whole at once; but, as he was giving his note, no reason can be imagined, why, if Mrs. Brooks was entitled to receive \$20,000, Mr. Boott should have given his note for only \$10,000, and thenceforward regularly paid Mr. Brooks the interest on that sum." [L. p. 53.]

Now will Mr. Lowell be good enough to tell me, first, why Mr. Boott, making a payment, *as executor*, of a sum, which

Mr. Lowell admits was due from him, in that capacity, to an heir, should have given a *note* for it, at all? The heir was entitled to the *estate's money*, not to *Mr. Boott's note*. If there was no money of the estate to divide, then there was no occasion to have volunteered a payment; for it was all his own voluntary act, without the slightest movement, or intimation, from me. If there *was* money to divide, as executor, why did he bring me his personal promissory note, except that he himself wanted the money? And if he wanted the money, what did he want it for? According to the "Reply," he was not a man to engage in speculations with other people's money; "he was a man of fortune, certainly worth, when I [Mr. Lowell] was his partner, at least \$70,000." [L. p. 57.] He put no money, we are given to understand, into any thing but his regular business, while that lasted. [L. p. 28.] His regular business, at this time, (December, 1823,) was only as a member of the firm of Boott & Lowell. He had, long before, according to Mr. Lowell, put into that firm \$40,000, which was all the capital he was to furnish there. [L. p. 58.] Why then did he not pay over, in money, the \$10,000, which did not belong to him, and which, if he had not previously used the estate's money for some other purposes than those of the estate, should have been money then lying in his hands, as executor, for distribution? The reader will presently perceive, both, why he did not pay money then, and why the note which he gave, in lieu of it, was suffered to remain, unpaid, till 1826, when it became included in a partnership settlement between him and his brother Kirk, who had become the owner of the note.

But Mr. Lowell says he can understand, if the payment had been *in money*, "why it might be inconvenient to pay up the whole at once." Now, I confess, that is, precisely, what I can *not* understand, *on Mr. Lowell's theory*. True, an executor might prefer to distribute stocks, or some other specific investment of the estate, in lieu of selling the stocks and distributing the money. But, if, according to Mr. Lowell's theory, Mr. Boott had not used, and was not then using, the funds of the estate, for any purpose other than the estate's

business, and the time had come for a distribution of those funds, I cannot understand, consistently with this theory, why he should not have made that distribution, either in money, or in the specific property, which he held for the estate. I cannot understand, why *an executor*, meaning to make a distribution, should *give his own notes*; or, why, if his distributable fund lies either in money, or stocks, it is not just as convenient for him, and a little more so, to make the whole distribution at once, in money, or stocks, as to make it half at a time. If, on the other hand, the executor had, inconsiderately, employed the funds of the estate in trade, and had got them into an *inconvertible*, or *unavailable*, shape, and was personally liable for them to the heirs, I can then understand, not only why he should have wished to give his own note, instead of paying money, or delivering stocks, but, also, why he should wish to give his note for \$10,000 only, rather than for \$20,000, although \$20,000 may have been the whole sum due and payable. Mr. Lowell says, for this "no reason can be imagined;" but it seems to me reason enough, if there were no other, that the note was *on demand*, and, consequently, that he was liable to be required to turn out the cash for it at any moment, if I had chosen to demand it, instead of letting it lie, as I did, on demand, for two or three years, and until I exchanged it, in 1826, for Mr. Kirk Boott's note, at the request, and for the accommodation of that gentleman.

But the true reason, in my belief, why Mr. Boott gave his note, was, that he had placed the estate's money, and his own, if he had any, where he could not control it. The true reason why he gave a note for no more than \$10,000, (in addition to the fact that it was a note upon demand,) probably was, that he had, previously, paid \$10,000 each, in money, to Mr. Lyman and to Mr. Ralston. This he knew I must be aware of. There was no reason, except the inconvenience of it, why a like sum should not have been paid to me, in money, long before; nor, indeed, why a larger sum should not have been paid to each of us. But, as I was, at that time, about going abroad, if he wished to make a payment, and especially to make it *by note*, it was important

that it should be done *then*; and, if I had not exhibited a perfect willingness to take his note, he would, no doubt, being then in excellent credit, have procured accommodation elsewhere, and paid over the money, so as to place me on a footing with Mr. Lyman and Mr. Ralston. But why, when he gave me a note for \$10,000, only, did he not say it was a payment *in full*, if it was so? Why did he say it was *upon account*? And *why did he take a receipt in that form?*

It might facilitate our understanding, perhaps, of Mr. Boott's motive in giving a note, if Mr. Lowell would tell us the exact date, which the account so strangely omits, of the executor's reception of that sum of \$69,389 99, paid over to him by Boott & Lowell. Boott & Lowell began in January, 1822. It was almost the last day of December, 1823, when Mr. Boott gave me the note. The partnership of Boott & Lowell came to an end, and the firm was dissolved, in about six months after. If Boott & Lowell had, *before* the date of the note, paid him that large sum, (which with what he had previously received from the old firm, made up the *whole* distributable property, according to the account of 1844,) having so large a sum of money in his hands, as executor, why did he not give me the money, instead of the note? Or, if Boott & Lowell paid the executor so large a sum *soon after* the date of the note,—as the term of the duration of that house would seem to indicate,—how happened it, that Mr. Boott did not, then, *take up his note*? Or, *how long was it, after the dissolution of the firm*, that this great sum, in the hands of Boott & Lowell, actually came to the executor? Mr. Lowell can throw some further light on these matters. Nobody else can.

Mr Lowell further remarks,—

“Mr. Brooks seems to have asked no questions on the subject; nor does it appear that a lisp ever fell from him, or from any one of the eight heirs, on this subject, during the twenty-four years that elapsed before Mr. Boott's death.” [L. p. 53.]

As to “the twenty-four years, that elapsed before Mr. Boott's death,” the reader will remember, that, in 1833, the

heirs had, voluntarily, discharged Mr. Boott from all existing claims, great or small. [Ante, p. 373.] Whether he had under-paid them, or not, after that, was wholly immaterial ; and if he had, (which, without accounts, they could not *know*,) it would have been, at least, very unavailing to complain of it. I have, besides, already explained why nobody asked questions of Mr. J. Wright Boott about the family property ; and I have proved the explanation, mainly, by Mr. Kirk Boott's letters. Why Mr. J. Wright Boott, unasked, did not wish to disclose particulars will, also, be intelligible enough, before I have done with the case, if it is not already.

But what further says Mr. Lowell ?

" Neither Mr. Wright Boott himself, nor either of his former partners, who must have been conversant with the whole business, nor Mr. Wells, nor Mr. Brooks, nor Mr. William Boott, in all my intercourse with them, and frequent conversations about the family property, ever hinted a suspicion that they had been under-paid.

In my settlement with Messrs. Lyman & Ralston, in 1831, I made it a prominent argument in Mr. Boott's behalf, that, from my own observation, I entertained no doubt that he had overpaid them. The same opinion I have expressed to Mr. Kirk Boott, and also to Mr. Brooks and Mr. William Boott, who have never, either of them, until these recent troubles, disagreed with me in opinion." [L. p. 54.]

What conversations Mr. Lowell may have had with the other persons here referred to, what arguments he may have used, and what opinions he may have expressed, *to them*, is, of course, not personally known to me. But, if none of the gentlemen, named by Mr. Lowell, ever hinted a suspicion that they, or somebody, had been under-paid by Mr. Boott, I beg to ask, why Mr. Lowell found himself called upon, so frequently, to express *his* opinion that they had been *overpaid* ?

As to Mr. William Boott, if *he* never hinted a suspicion, that he had not received his full share, I think the reader has already seen, that, it was not because he had not good ground to entertain it ; [Ante, Ch. 20.] and, if it be true, that Mr. Lowell ever expressed opinions to that gentleman, which that gentleman did not choose to contradict, it could only have been because his brother's unfortunate management of the family

property was a topic extremely disagreeable to him to converse upon, and the particulars of which, (never having seen the accounts,) he had no certain knowledge of. It, certainly, was not a subject, which, Mr. J. Wright Boott, himself, would have been likely to introduce to Mr. Lowell, or Mr. Lowell to him; and, except when some urgent occasion called for an expression of opinion, or for resistance to the expressions of Mr. Lowell, all members of the family would, naturally, feel themselves restrained, and bound to silence, on this subject. What motive had they to attempt to convert Mr. Lowell?—and, without accounts rendered, what means had they of doing so?

Except in the case of the Lyman & Ralston settlement, in 1831, and the release of 1833, no occasion ever existed, to my knowledge, likely to draw out the expression of opinions by any body, unless while the allowance of the account of 1844 was under consideration, or shortly before that time. The case of Messrs. Lyman and Ralston is one, in which calls for further payment were much urged by them, as will presently be seen; and the reader will note, that Mr. Lowell is careful *not* to enumerate *them*, among the persons, who *never* “*hinted a suspicion* that they had been under-paid.” After that settlement, and before the family difficulties, which arose in the latter part of Mr. Boott’s life, when, and with whom, could Mr. Lowell have conversed on the subject? and with what parties, who had any cause of complaint? Several, perhaps most, of the heirs, I think it will appear, had received their full \$20,000,—Mr. Kirk Boott, and, I believe, Mr. Wells among them. Messrs. Lyman & Ralston, whatever they may have got by the settlement, assigned, as part of that arrangement, all their remaining interest to Mr. J. Wright Boott. Dr. Francis Boott has been in England since 1818. All the heirs in this country, moreover, released their claims, except on the trust funds, in 1833. Why was that, by the way, if nobody was supposed to have been under-paid? Why did they think it needful to join in a release? And why did Mr. Boott accept and record it? This having been done, in 1833, when questions arose, in 1844, about the accounts, all

that was then looked to were the integrity and security of the trust funds. The incongruities and imperfections of the account, in all other respects, were supposed to be covered and swallowed up by that former release, until Mr. Lowell ventured to give out otherwise, at first, in effect, to the coroner's jury, and afterwards, in plain terms, in his pamphlet. From the moment when the account was agreed to and passed, that whole subject of controversy was done away, and supposed to be buried. It was buried ; and would have forever remained so, but for Mr. Lowell. But, while the question was open, who was there, of the heirs, I desire to ask, for Mr. Lowell to exchange opinions with ? Mr. Kirk Boott had been long dead. Mr. James Boott, as well as Dr. Francis Boott, was in England. Messrs. Lyman and Ralston had no interest left. And, in respect to Mr. Wells, Mr. Lowell himself tells us, “ *Until after* the passage of those accounts, I never exchanged a word with Mr. Wells, on the subject of the family troubles, nor indeed had I conversed with him on *any* subject for *many years.*” [L. p. 54.]

Nobody is left but Mr. William Boott and myself. Mr. William Boott’s reserve on this subject I have already expressed. While it was under discussion, I was the person, and, I believe, the only person, who spoke freely to Mr. Lowell ; for I was the only one of the heirs, living, who knew certain material facts ; and if Mr. Lowell means now, as he says, that, in our “ frequent conversations about the family property,” I never hinted to him *my* belief that some of the heirs had been paid less than others, and less than they were entitled to, or that *I ever agreed with him in a contrary opinion*, I shall be obliged to say that Mr. Lowell is labouring under some “ old delusion ;” [L. p. 203.] or that his memory is “ signally treacherous ;” [L. p. 95.] or something else, not much short of saying, that “ the audacity of this passage defies all competition.” [L. p. 69.]

CHAPTER XLVII.

CASE OF MESSRS. LYMAN AND RALSTON. PROOFS THAT THE \$10,000 PAYMENT TO THEM WAS ONLY ON ACCOUNT.

I have mentioned the fact, that both Mr. Lyman and Mr. Ralston received from Mr. Boott, in money, \$10,000 each, before the payment of that sum to me, by note, in 1823, and that they received it, not as a payment in full, but on account of the \$20,000, or thereabouts, held out as coming to them upon the closing of certain accounts in England. Their receipts, which ought to show this, are, of course, in Mr. Lowell's hands. I have also mentioned, that both those gentlemen, in 1830, before I was aware of Mr. Boott's unfortunate position, applied to me for advice respecting the best step for them to take to obtain the remaining \$10,000 each, which they understood to be their due, and which, if due, they stood in much need of, in consequence of their embarrassments, growing out of the business of the foundry ; and that, by my advice, they made personal application for it to Mr. J. Wright Boott. This was followed, almost immediately, by the astounding disclosure, made by Mr. J. Wright Boott to Mr. Kirk Boott and myself, of his real pecuniary position. So much rests, of course, upon my statement.

Opposed to this is the statement of Mr. Lowell, that, in his settlement with Messrs. Lyman and Ralston, in 1831, *he* made it a prominent argument, in Mr. Boott's behalf, that, from his own observation, he (Mr. Lowell) entertained no doubt that Mr. Boott had *overpaid* them ! [L. p. 54.]

Now I do not doubt that Mr. Lowell, endeavouring to make the best possible arrangement for Mr. Boott, employed, on that occasion, his most plausible arguments, enforced by his strongest statements. That he succeeded in effecting a most advantageous bargain for Mr. Boott, I have already conceded. But did those gentlemen, (Lyman and Ralston,) after having been informed otherwise by Mr. Boott himself, *agree* to Mr.

Lowell's suggestion, founded upon nothing but his own alleged opinion that they had been overpaid? Mr. Lowell does not pretend this. He proclaims, boldly enough, that, when he expressed such opinions to Mr. Kirk Boott, to Mr. William Boott, and to me, *we* never disagreed with him, "until these recent troubles." We certainly had *no occasion*, before that time, to *express* our disagreement, whatever occasion Mr. Lowell may have found to favour us with his opinion, on a point, which nothing but the accounts could settle. But, respecting Mr. Lyman and Mr. Ralston, the "Reply" is, on this point, studiously silent. We are only told that Mr. Lowell *argued* to them, and *assured* them, that *he* entertained no doubt that they had been overpaid. We are not told what they said in answer. The inference is inevitable, that *they*, having great occasion to urge just claims in a settlement, did not accede to his statements.

To aid in the determination of this fact, as well as on other accounts, I should be particularly glad to see the papers connected with that settlement of 1831, all of which Mr. Lowell says he has, [L. p. 109.] and every one of which he is most careful to keep to himself. But, though not favoured with the light of those documents, we are not wholly destitute of contemporaneous evidence, sufficient, I think, to establish my main position, and to confute Mr. Lowell's.

He must not be surprised, therefore, to find, that, knowing what I knew at the time of the sentiments entertained by those gentlemen, I infer, from all the evidence before me, that they not only did not admit that they had been overpaid, but insisted, that, at least, \$10,000 more was then due and payable to them from the estate, besides the \$10,000 they had received, and besides the expectancies at the decease of Mrs. Boott; that the justice of their demand was never denied by Mr. Boott, nor disputed by any body, unless by Mr. Lowell; that, if disputed by him, it was, at last, virtually yielded; and that a settlement was made with them, by Mr. Lowell, for Mr. Boott, on that very basis!

If I am wrong, in any of these inferences, Mr. Lowell can easily set me right, by simply exhibiting "all the original

papers," which, he says, are still in his possession. [L. p. 109.] He has stated the terms of the settlement on certain points; [L. p. 79.] not on this. He has shown, that, in payment for Mr. Boott's investment of at least \$70,000,—which he asserts was not then esteemed a bad investment, [L. p. 90.] and which Mr. Ralston, undoubtedly, thought to be a tolerably good one, though subject to a large amount of debts,—Mr. Lyman and Mr. Ralston, for themselves and their associates, besides assuming the debts, transferred to Mr. Boott, all the *reversionary* interest (so Mr. Lowell states it,) of their wives, in the real and personal estate of Mr. Boott, senior, together with a cash payment of \$7624, secured by note. [L. p. 79.] But was it their *reversionary* interest, *only*, which they assigned, as Mr. Lowell pretends? Their deed expresses otherwise. It conveys, in terms, not only all their title in the mansion-house, (which was *reversionary*,) but also,

"all our respective shares, portions, and interest in ALL THE FUNDS, STOCKS, CHATTELS, AND PERSONAL PROPERTY OF AND BELONGING TO THE ESTATE OF THE LATE KIRK BOOTT, ESQ., or held and possessed by any person or persons, AS TRUSTEES under his will, OR AS EXECUTORS THEREOF." [B. App. 22.]

That is, it assigns to Mr. Boott all that was *presently due* from him as executor, as well as all that might become due in reversion. I was, myself, inaccurate on this point in my former pamphlet, and spoke, incidentally, of the interest assigned as if it had been only *reversionary*. [B. p. 41.] Mr. Lowell takes care, not only to adopt the error, but to confirm it by positive statement.

In this connexion, let us inquire, how much, *in value*, was given, according to Mr. Lowell, in exchange for Mr. Boott's \$70,000 investment? What was all the *reversionary* interest of Mrs. Lyman and Mrs. Ralston then worth? We are told, it would amount, *at the decease of Mrs. Boott*, to \$16,000 a share, [L. p. 201.] or \$32,000 for the two shares. That is true, provided we reckon Mrs. Boott's fund as good for the full \$100,000, and the mansion-house as then worth the \$46,000, which it brought in 1844. But, at the time of the settlement,

in 1831, the mansion-house was not worth more than \$30,000. This brings down the reversionary shares, at the fair estimate of 1831, to less than \$14,500 each, even without calculating and deducting Mrs. Boott's life interest, which was then about fifty per cent. of the whole value. So important an element as that, could hardly have been overlooked, by an agent so acute as Mr. Lowell, in such a settlement. If not, then the value, at that time, of the *two* reversionary shares, taken together, (calling the trust fund, as Mr. Lowell does, \$100,000, and the mansion-house \$30,000, at which I rate it, and deducting the value of Mrs. Boott's life estate in each,) could have been estimated at only about \$15,000; and this, added to the alleged cash payment of \$7624, would make less than \$23,000 of actual present value, given by Messrs. Lyman and Ralston, according to Mr. Lowell's representation, in exchange for \$70,000 of value, put into the foundry by Mr. Boott.

This would seem to be rather too liberal a discount for such an agent to have made, on the sale of so excellent an investment, to parties, who estimated it highly. But, if we suppose it to have been agreed that Mr. Boott, though he had paid in \$70,000 to the joint concern, owed, at the same time, as executor, \$20,000 to his partners, personally, for moneys in his hands beyond what he had paid to them, so much of the money, put into the foundry by him, they would, of course, have considered to be, in reality, *their money*, reducing Mr. Boott's own separate investment there to \$50,000. That amount of investment, (liable to Mr. Boott's one third of the debts due from the joint concern,) would, in that case, have been the subject of the sale for about \$23,000 of real value to Mr. Boott; and if the debts of the concern were, as Mr. Kirk Boott states, \$80,000, [Ante. p. 278.] one third of them, deducted from the \$50,000 investment, would leave a sum very nearly balanced by the \$23,000 of payment. All this, I admit, *may* be mere coincidence. I do not pretend to know, now, what the fact was, although I may have known it at the time. But a settlement, on these terms, would, at least,

seem to be a more probable bargain for Mr. Lowell to have made, than that, which is suggested by his partial disclosures.

That Mr. Ralston did, for some reason, insist, that Mr. Boott had not furnished so large a portion of the funds, in their joint concern, as Mr. Boott at first contended, I have shown by Mr. Ralston's own letter of November 12, 1830, before printed. [Ante, p. 232.] And since there is no doubt that Mr. Boott had actually paid in, at least, \$70,000, and since there could be no doubt, among the parties themselves, how much each of the other partners had actually paid in, it is plain that the ground, upon which Mr. Ralston so insisted, must have been this very fact, that a large part of the money, paid in by Mr. Boott, was no more than Mr. Boott owed, as executor, to Mr. Ralston himself, and to Mr. Lyman, and consequently was, to all intents and purposes of the partnership, *their money*.

Notwithstanding the \$10,000 payment to each, which Mr. Lowell and the account of 1844 represent as more than all that was due, it is certain that a further indebtedness of Mr. Boott, as executor, to them, was well understood in 1830-31, not only by them, but by Mr. Kirk Boott and myself. This distinctly appears by the letters of that gentleman, heretofore exhibited, although Mr. Lowell pretends to show from another letter, which he produces, that Mr. Kirk Boott thought the balance of the account was the other way! Before looking at that letter, let me remind the reader of a few short passages, bearing directly on this point, in the letters, which he has lately read, and he will see, at once, how the fact stands.

EXTRACTS.

[From the letter of Sept. 29, 1830, Ante, p. 276.]

"I do hope R. & L. will not *urge this claim*, if it can possibly be helped."

Now, will Mr. Lowell have the goodness to explain what claim Messrs. Lyman and Ralston had, to urge against Mr. Boott, except that he should pay them whatsoever was then due and payable from his father's estate in his hands? Is not

this the very same claim, which Mr. Ralston and Mr. Lyman had lately invited Mr. J. Wright Boott to settle, after consulting with me on the subject? Is not the existence of this claim the very circumstance, which Mr. Ralston alludes to, in his letter of November 12, in the same year, as one, which ought to satisfy Mr. Boott that he had not, really, furnished so large a proportion of the capital, used in their concern, as he had asserted? [Ante, p. 232.]

Mr. J. Wright Boott, himself, in the extract from his note to Mr. Kirk Boott, cited by the latter, refers to the same thing.

[From the same letter, Ante, p. 275.]

"If the children [meaning his wards of the F. Boott family,] are paid in full, and *this claim of theirs also*, [Lyman & Ralston's,] *the whole burthen will fall on my poor mother*," &c.

The reader, on turning back to that letter, will note, that Mr. J. Wright Boott, instead of denying that this claim was well founded, tacitly admits it, and only prays that it may not be *pressed*, out of consideration to his *mother*; and as a further motive to forbearance, suggests, that "It is certainly for the interest of the *heirs* that the fund left to my mother should be made good." What can all this refer to but the unpaid balance due from the executor?

The "Reply," indeed, represents, that, in this letter, Mr. J. Wright Boott was "commenting upon the reluctance of Lyman & Ralston to join in an assignment of the Mill Dam property, to secure the guardianship accounts;" and that there is "not a word about his owing any thing to the heirs *beyond the trust fund*." [L. p. 82.] What can be more absurd? Will Mr. Lowell please to tell us, what Mr. Boott means by "*this claim of theirs on him*?" The proposed assignment, which Lyman & Ralston are said to have been reluctant to execute, was no claim of *theirs* on Mr. Boott, but a claim, which *Mr. Boott* is supposed to have been urging upon *them*.

[From the letter dated "Tuesday Evening," Ante, p. 278.]

"My own opinion is, that J. W. B. should, at once, assign all his property, first to secure F. B.'s heirs, and next *the estate and heirs of*

my father. The endorsements for R. & L. are no debts of his, [i. e. considering the amount he has already put into the joint concern, beyond what they have put in,] and securing to them a *just proportion* [because payment in full was considered hopeless,] of what he may owe them as executor, is all, under the circumstances, they can claim."

—“J. W. B. cannot, in justice to my mother, assist them.”

What does Mr. Kirk Boott mean by assigning the property to secure “the estate and heirs” of his father, if he did not consider Mr. J. Wright Boott then indebted to the estate and its heirs?—to each of whom, as Mr. Lowell admits and contends, he had paid, before this date, the sum of “\$10,000 and upwards.” [L. p. 27.] And what does he mean, by “securing to them [Lyman and Ralston,] a just proportion of what he may owe them as executor,” if he, in truth, owed them nothing?

[From the letter of May 22, 1831, Ante, p. 280.]

“The mortgage of the Mill Dam [Foundry] I presume is made entirely for L. & R.’s debts, and if the property is worth only *half* what they estimate it at, THIS WILL COVER ANY DEMANDS THEY HAVE ON J. W. B. AS EXECUTOR. His *reversion* of the estate, which he says he will never touch a cent of, might be pledged as security for his endorsements, and in justice, perhaps, this is all that the R.’s can claim.”

Now, what demands had they “on J. W. B. as executor,” if the \$10,000 payment, which had been previously made, were, as Mr. Lowell pretends, all, and more than all, they were entitled to receive, during the life of Mrs. Boott? Claims upon the annuity funds they could not have, until the trusts had terminated. And why does Mr. J. Wright Boott say that he will never touch a cent of his *reversion*, if he did not then owe to the other heirs, or to some of them, more than he ever hoped to be able to pay, unless by his reversion, so far as that might go, when it should come into possession?

[From the letter without date, written at the time a joint stock company was talked of, Ante, p. 281.]

“This morning he [one of the Messrs. Ralston] proposed to me the following:—That Lyman should convey to R. R. [Robert Ralston, jr.] all his interest in the M. D. F. [Mill Dam Foundry] as well as any claim upon J. W. B. as executor, and his reversionary interest in the estate.”

Mr. Lowell has omitted to notice nearly all the sentences above extracted; but, on this last, he ventures the following remark :—

“The above quotation very properly distinguishes between the *trust funds*, which were in Mr. Boott’s hands *as executor*, and the *real estate*, of which the reversion had already *vested in the heirs*. [L. p. 83.]

This seems to be that description of nicety, which is commonly called a quibble. Mr. Kirk Boott is, plainly, distinguishing between nothing but *present* claims and *reversionary* interests, whether relating to real or personal estate. When he means to speak of “the real estate,” that is, the mansion-house, it will be seen by his letters, that he uniformly calls it “the house in the square,” or uses some other term, which plainly designates a *house*. When he speaks of “*the estate*,” he always means the *general* estate, left by his father, and managed by his brother. What did he mean, for instance, in the citation just above, when he speaks of an assignment to secure, first, F. B.’s heirs, and “next, *the estate* and heirs of my father.” Did he mean the mansion-house? Or, when he says, in a letter, which I shall presently cite, “You were authorized to *use the estate* in business!” did he mean the mansion-house? Mr. Lowell pays but a poor compliment to the understanding of his readers, when he resorts to such shallow expedients for hiding the truth.

In the face of all this language, used by Mr. Kirk Boott, Mr. Lowell has the boldness to declare, that “not the *slightest hint* is given in these letters, that Mr. Boott was indebted to the estate of his father, *beyond the amount of his trust fund*.” [L. p. 82.] As if there could, by any possibility, have been a claim, at that time, by Messrs. Lyman and Ralston, or by either of the heirs, on the executor, for any thing on account of an undistributable trust fund!

So, when he comes to introduce the letter of Mr. Kirk Boott, which enclosed to his brother Mr. Jackson’s letter of May 30, 1831, the comment is :—

"This letter is interesting on another account. It shows that Mr. Kirk Boott knew, and speaks of it as an *admitted fact*, that Lyman & Ralston *were indebted to Mr. Wright Boott, as executor, and not he to them*. If they could secure him as indorser, and pay him the amount due to him as executor, this, Mr. Kirk Boott says, 'would entirely free you from all responsibilities.' How so, if Mr. Boott was then really owing the heirs of his father \$90,000 and upwards, as Mr. Brooks pretends?

This is another contemporaneous exposition, to be offset against Mr. Brooks's *reminiscences*." [L. p. 104.]

That he was "owing the heirs of his father's estate \$90,000 and upwards," is not my pretence,—as the reader will presently see; because he will see, that my *pretence* is, that several, if not most, of the heirs, had been *paid* \$20,000 each, instead of \$10,000. But the real difficulty, about exposing Mr. Lowell's imposition, (besides the multiplicity of facts to be made known,) lies in the extremely sinuous and slippery character of this "Reply," which glides, rapidly and smoothly, over the surface of difficulties, and hurries the reader on, from one bold and captivating statement to another, before he has time to see where he is. The only mode of dealing with it is, to pin the author at each particular turn, and to hold him there, pinned, until his exact position has been defined, and the evidence examined. When this has been done, the point in question may, commonly, be settled against him with great ease, and, most commonly, out of his own book. That is what I propose to do, next, with the point above made out of Mr. Kirk Boott's letter.

CHAPTER XLVIII.

PRETENDED PROOF, BY A LETTER FROM MR. KIRK BOOTT, THAT THE \$10,000 PAYMENT TO MR. LYMAN, AND TO MR. RALSTON, WAS AN OVER-PAYMENT.

The statement is, that Mr. Kirk Boott's letter, enclosing Mr. Jackson's letter of May 30, 1831, "shows that Mr. Kirk Boott *knew*, and speaks of it as an *admitted fact*, that *Lyman & Ralston were indebted to Mr. Wright Boott, as executor, and not he to them.*"

Does Mr. Lowell mean to stultify Mr. Kirk Boott? The reader has already seen, that, in a series of letters, coming down to May, 22, 1831, that is, within ten days of the letter referred to in the statement above cited, that gentleman uniformly spoke of it, "as an admitted fact," that Mr. J. Wright Boott was indebted to "the estate and heirs" of his father, and, particularly, that Messrs. Lyman and Ralston held, and urged, unsatisfied claims upon him, as executor. Did he, really, mean to speak of the balance of account, between those parties, as being *both* ways, almost in the same breath? Does he really do so?

How does Mr. Lowell suppose, (or mean his reader to suppose,) that Messrs. Lyman and Ralston could have *owed* any thing to *the estate* of Mr. Boott, senior, unless the funds put into the foundry were regarded as funds of the estate? I have already shown that Mr. Lowell, in his pamphlet, endeavours to make his readers believe that Mr. J. Wright Boott had not used the funds of his father's estate in that business; [Ante, p. 257.] although he, formerly, not only admitted the contrary, but insisted that Mr. Boott was justified in that use of the funds, and even that I thought so myself at the time. In proof of this he cited a letter, written at some time in 1830-1, by Mr. Kirk Boott to his brother, containing this language:—

"By the provisions of the will, you were authorized to use the estate in business; and while there is not, on any side, a shadow of suspicion that you have heedlessly squandered it, there can be no imputation on your honor and integrity, though it be in your hands greatly diminished. But this will not apply to F.'s children. We are therefore of opinion that they must be paid in full, at all events, and effected as soon as possible." [B. p. 130.]

Mr. Lowell also cited, to the same point, a letter from Mr. Ralston to Mr. Boott, saying :—

"No one, at that time, or during the whole negotiation subsequent thereto, ever impeached your honor and integrity, or doubted that by your father's will you were at full liberty to employ the capital in your hands in business." [B. p. 130.]

These letters, or one of them at least, as I formerly explained, were written to soothe Mr. J. Wright Boott's agitated feelings, well depicted by his own strong language in a letter above cited. [Ante, p. 275.] The fact, believed by all of us, was, that the capital, put into the foundry by Mr. Boott, really belonged to the estate. Such a use of the estate's money Mr. Kirk Boott and myself considered an error of judgement, but not an impeachment of Mr. J. Wright Boott's "honor and integrity." It was true, that the will authorized a limited use of the funds of the estate in certain mercantile business of a particular firm, but not in such a firm, or such business, as Mr. J. Wright Boott had in fact used them for; and Mr. Kirk Boott, desiring to administer to his brother the utmost consolation, which truth would permit, alludes to this provision of the will as a species of excuse, straining it a little perhaps by the generality of his expression, though he is careful not to say, in terms, that it authorized the use of the estate's funds in the *particular business of the foundry.*

That property, he and I agreed, must not be taken for an investment of the estate; and we acted upon that agreement, as already shown. [Ante, Ch. 29.] But, when this question is raised by the "Reply," whether Mr. J. Wright Boott, as executor, owed Messrs. Lyman and Ralston, for moneys due to them from the estate and not paid over, or whether they

owed him, as executor, for moneys advanced from the estate beyond what they were entitled to, it will be perceived that its solution obviously depends upon this alternative, namely, whether the \$70,000, put into the foundry by Mr. Boott, should be treated as a private investment for himself, or as an investment *for the estate*, made in his capacity of executor; and that this question might be affected by the manner, in which Messrs. Boott, Lyman and Ralston should settle their partnership accounts.

In the letters, above cited, from Mr. Kirk Boott to me, we have seen that he, uniformly, spoke of Mr. Boott's indebtedness to his father's estate, and of the claims of Messrs. Lyman and Ralston on him as executor, as known and admitted facts. He was proceeding, then, on the idea, conformably to the understanding between us, that the money, put into the foundry, was to be treated as Mr. Boott's private investment, and should not be accepted as an investment for the estate. In that case, Mr. Boott would still owe, as executor, to Messrs. Lyman and Ralston, whatever their shares might amount to beyond the \$10,000 paid to each of them. But if, on the other hand, the money put into the foundry by Mr. Boott, were looked upon as the *estate's* money, not borrowed by him for his own *separate* use, but intentionally put in by him, *as executor*, by way of loan to the joint concern, and as an investment for the estate, in that case, and upon that theory, all the partners would owe the estate for that money, and whatsoever was due from the executor to Messrs. Lyman and Ralston, for their shares of the estate, might, and would, be overbalanced by the larger sum due from them to the executor, for the moneys, which he, as executor, had invested in the partnership business. This will be found to reconcile, entirely, any seeming inconsistency between Mr. Kirk Boott's letters to me, and the letter to his brother, cited by Mr. Lowell,—the material part of which I will now extract.

EXTRACT FROM MR. KIRK BOOTT'S LETTER TO MR. J. WRIGHT BOOTT.

"J. A. L. offered, and offers, to go on to Philadelphia for the purpose of arranging with the Ralstons as to your indorsements and the mortgage; and I believe he would find little difficulty in settling them.

The *reversionary* interest of Lyman & Ralston in the estate is, in fact, some security, and might be substituted for your name. The Milldam might be divided according to your respective interests, *the whole deeded to L. & R. and a mortgage given by them for the amount due you as executor.*

This would entirely free you from all responsibilities, and leave you free to make your election as to your future occupation; and certainly not put L. & R. in any worse condition than they are at present." [L. p. 103.]

The reader will now perceive, that the whole subject of this letter is merely *a proposed scheme for a settlement* with his copartners, whereby Mr. J. Wright Boott was to be extricated from the connexion.

In the first place, he was to be relieved from his endorsements on their paper; and, to facilitate that object, it is suggested, that Messrs. Lyman and Ralston might give, in lieu of his name, a pledge of their *reversionary* interests in the estate of Mr. Boott, senior, to stand as a substituted security to their own accommodation creditors.

In the next place, the \$30,000 mortgage, which covered Mr. J. Wright Boott's investment in the foundry, it is proposed should be discharged. This would leave a clear title in that property to Boott and Lyman, (in whom the legal title stood,) subject to the adjustment of the partnership accounts between Boott, Lyman and Ralston, which would determine their respective equitable interests.

In the third place, this Mill Dam property, which was the subject of their partnership account, is "to be divided according to your respective interests,"—that is, when it should have been ascertained, by the settlement of their partnership accounts, how much of the common fund each partner had really contributed. This would involve the question, how much of the \$70,000, put in by Mr. J. Wright Boott, represented money due from him, as executor, to Mr. Lyman and to Mr. Ralston.

In the fourth place, this being settled, it is proposed that *the whole property should be deeded to Messrs. Lyman and Ralston*, who would then, of course, owe Mr. Boott, either on his own account, or as the representative of his father's estate, the value of his interest sold to them, beyond what he, as executor, previously owed them.

And, finally, it is proposed, that this *balance*, which would, in that case, be due to Mr. Boott, should be treated as a balance due to him *in his capacity of executor*, and should be secured to him, accordingly, by a mortgage of the foundry, *to be made to him as executor*. The balance, so ascertained, would represent so much money of the estate, which Mr. Boott had chosen to borrow from himself, as executor, to employ in that concern;—money invested by him in certain property, which the scheme supposes is to be *sold* to Messrs. Lyman and Ralston, and which money, it is thus proposed, should be treated as a *loan by the executor to Messrs. Lyman and Ralston*, when they should have become sole owners of the foundry, according to the terms of the proposed settlement, whereby Mr. J. Wright Boott, both personally, and as executor, was to be withdrawn from the further hazards of the business. Mr. Lyman and Mr. Ralston would, thus, have been *paid* what was due to them personally; and, for the residue of their purchase, they would have become mortgage debtors to the *estate*, which would, thus, have become, so far, secured against loss of the funds subtracted by Mr. Boott for the use of the foundry. And this, Mr. Kirk Boott truly says to his brother, “would entirely free you from all responsibilities,”—meaning, of course, so far as they arose out of his connexion with the firm of Lyman & Ralston, and his use of the estate's funds in the business of that firm.

But this *mere scheme* for a settlement, by which, *if carried into effect*, Mr. Lyman and Mr. Ralston *would have become* debtors, on mortgage, to Mr. Boott, as executor, Mr. Lowell treats as if it were a *fact*, instead of a scheme, and boldly asks the reader to infer, from Mr. Kirk Boott's language, that he *knew*, and spoke of it as an *admitted fact*, that Lyman

& Ralston ACTUALLY WERE *indebted to the executor as such, and not the executor to them!*

But Messrs. Lyman and Ralston would agree to no such terms. They would not consent to become substituted debtors to the estate, in the place of Mr. J. Wright Boott. The actual settlement, effected some months after by Mr. Lowell, as described by him, was not on this basis. As before remarked, he does not choose to tell us *all* the terms of that settlement, and he does choose to withhold all the papers that relate to it. But how difficult it is, in the course of a long argument in a complicated case, to shut truth completely out of sight, and keep it hid at every corner.

If this general reflection should seem to be somewhat after the manner of the "Reply," I, at least, shall not follow it by pressing the poets into such inappropriate service. I prefer, for my own part, to adhere to the plain prose of so unpoetical a subject as a settlement of accounts, and to prove the falsehood of the "Reply" on this point, out of the "Reply" itself.

CHAPTER XLIX.

PROOF, FROM THE "REPLY," THAT LYMAN & RALSTON RECEIVED, EACH, AN ADDITIONAL \$10,000, IN THEIR FINAL SETTLEMENT. MR. KIRK BOOTT'S LETTER OF 1826, AND THE COMMENTS UPON IT.

Before Mr. Lowell was able to get through his argument, he, unluckily, thought it necessary to make a hasty answer to certain comments of mine on Mr. J. Wright Boott's extraordinary will; which I had pointed out among the evidences of an intellect perverted, on certain subjects, into a mono-

mania. [B. pp. 81-89.] The circumstances are not material to repeat here, further than to remind the reader, that both Mrs. Lyman and Mrs. Ralston had voluntarily surrendered, in 1831, all their rights, present and reversionary, in their father's estate, to Mr. J. Wright Boott, in discharge of their husbands' debts to him, arising out of the settlement of their partnership accounts; that all the property, disposed of in Mr. J. Wright Boott's will of 1844, consisted of three reversionary shares of that estate, two of which he had acquired in the manner above mentioned; and that, by his will, nearly the whole is left to Mrs. Ralston,—nothing to Mrs. Lyman, though the death of her husband had left her better entitled to such a provision than Mrs. Ralston. The "Reply," such as it is, consists in showing, that, on the final settlement between Mr. Lyman and Mr. Ralston, Mr. Lyman remained indebted to Mr. Ralston in a large sum of money. What was that to Mr. Boott? What had it to do with the restoration to his *sisters* of their *own* patrimonial property, which had been assigned by each of them, with equal generosity, to Mr. Boott, in payment of their *husbands'* respective debts to *him*?

But I do not, now, propose to inquire into the validity of this excuse for the treatment of Mrs. Lyman. I desire, only, to point to a particular fact, stated by Mr. Lowell in this connexion, which bears on the question I am discussing of the indebtedness, and amount of indebtedness, of the executor, to Messrs. Lyman and Ralston, in 1831.

I extract as follows:—

"Mr. William Lyman owed the firm on the 31st of December, 1830, for money taken up by him for his family expenses and other purposes, \$34,372 48
And received a credit for Mrs. Lyman's share in her father's estate, coming from the trust funds, of \$24,904 44 (being one half of the estimated value of Mr. Boott's share in the Foundery, purchased by Messrs. Lyman & Ralston with the reversions of their wives); the value of each reversion, when realized, will be only about \$16,000. When the partnership was finally dissolved, in April, 1833, the balance against Mr. Lyman, for personal advances to him, was 10,991 07 which was forgiven to him by Mr. Ralston." [L. p. 201.]

There is a degree of obscurity in this, (whether accidental or intended the reader must determine,) concerning the *occasion*, upon which Mrs. Lyman's share was so valued. The general impression, conveyed to a cursory reader, probably is, that the Italicized passage, to which I desire to draw attention, relates, as its context does, entirely, to some settlement between Mr. Lyman and Mr. Ralston alone; and that this had no connexion with the settlement between them, jointly, and Mr. Boott, which occurred in September, 1831. The idea, so obtained, would be, that Mr. Lyman had received, from *Mr. Ralston*, a credit of the sum named, for Mrs. Lyman's share in her father's estate, *irrespective of any allowance for it to, or by, Mr. Boott*, in his settlement with Lyman & Ralston. Closer attention will show, I think, that this could not have been the fact.

The sum, named, is said to be "one half of the estimated value of Mr. Boott's share in the foundery, *purchased by Messrs. Lyman & Ralston with the reversions of their wives.*" When and how was that purchase made? Mr. Lowell himself tells us that it was in the settlement, which *he* made for Mr. Boott with Lyman & Ralston; [L. p. 79.] and the deed from Messrs. Lyman and Ralston and their wives, by which their shares in the estate of Mr. Boott, senior, were conveyed to Mr. J. Wright Boott, fixes the date of that transaction to have been in September, 1831, and describes what was therein conveyed. [B. App. p. 22.] They, jointly, conveyed the two shares to Mr. Boott, in exchange for the estimated value of his interest in the foundry, which he conveyed to them. Of course, there could be no *subsequent* conveyance by Mr. and Mrs. Lyman of their share to *Mr. Ralston*, since it was already conveyed to Mr. Boott; and if the course of dealings and accounts, between Messrs. Lyman and Ralston, was, afterwards, such, that Mr. Ralston, when he came to a final settlement with Mr. Lyman, found occasion to credit him for the value of Mrs. Lyman's share, (which, as well as Mrs. Ralston's, had been conveyed to Mr. Boott, in their joint purchase of the foundry,) that value must have been determined by the allow-

ance made for it by Mr. Boott, in the settlement with him, since it was the *price* of "one half of the estimated value of Mr. Boott's share in the foundery," conveyed to Lyman & Ralston jointly, or according to their appointment, in exchange for what they conveyed to him. The *quid pro quo* seems to settle this. Mr. Ralston would hardly have allowed for it, to Mr. Lyman, half as much again as Mr. Boott had taken it for; especially if Mr. Ralston, after allowing to Mr. Lyman all he was justly entitled to, was about to forgive to him a balance of \$10,000 besides, as Mr. Lowell says he did.

Here seems to be an important fact, then, concerning the settlement, in 1831, between Mr. Boott and Messrs. Lyman and Ralston, not stated by Mr. Lowell in the place where his "Reply" purports to give an account of the terms of that settlement; [L. p. 79.] but which leaks out, incidentally, when he finds occasion to use it in a different part of his case. Indeed several facts seem to be involved in the statement. 1. That Mr. Boott's share in the foundry, when purchased by Messrs. Lyman & Ralston, was estimated at near \$50,000. This corresponds, very closely, with my late inference from other premises. [Ante, p. 481.] 2. That it was paid for by the shares of Mrs. Lyman and Mrs. Ralston in their father's estate; and so Mr. Lowell had previously stated, with the addition however, of \$7624, said to have been paid, besides, by a secured note, for some reason unexplained. 3. That Mrs. Lyman's unpaid share of the estate, (and that of Mrs. Ralston must have been just the same, for Messrs. Lyman and Ralston had received, each, a like sum,) was estimated, for this purpose, at a fraction short of \$25,000.

Now mark the consequences. There were nine such shares.

Of course the *whole property*, of which a *share* was to be ascertained, must have been estimated at about nine times \$25,000, that is,

But Mr. Lyman and Mr. Ralston had received, long before, their \$10,000 each, as Mr. Lowell admits, and as their receipts in his keeping will show, and the account of 1844 declares that such a sum had been paid to every heir, making

\$225,000

90,000

315,000

The total property of the estate, then, besides what the will gives, specifically, to Mr. Boott and to the widow, was estimated at about	\$315,000
Of this, a part was the mansion-house, appraised in the executor's inventory at	24,000
	—
Leaving of <i>personal</i> property, which came to the executor's hands, according to this estimate,	291,000
If we deduct from this the amount of the particular trust funds, about	111,000
	—
It will leave for the sum, which was, or should have been, at some time, distributed among the heirs,	180,000

This \$180,000 stands in the place of the \$90,000, claimed, by the account, to have been *all* that was in fact distributed, and a little *more than all* that was properly distributable. This \$180,000, gives just \$20,000 to a share, instead of \$10,000, which Mr. Lowell pretends to have been the whole, and even more than the whole, of a distributable share. This makes the aggregate of the personal property, which had come to the executor's hands, exclusive of chattels specifically bequeathed, upwards of \$290,000, instead of about \$186,000, which is all the account debits to the executor for cash capital received. The result of this statement conforms, almost exactly, to my former view, concerning the probable amount of the estate left by Mr. Boott, senior, and is totally inconsistent with Mr. Lowell's view, as put forth in his pamphlet, and totally inconsistent with the truth and completeness of the account in question.

Let me repeat this in another form and more exact figures.

Mr. Lyman received, on his wife's account, in 1821,	\$10,000 00
In 1831, her <i>remaining</i> share of the estate, including reversions, was estimated, in a certain settlement made by Mr. Lowell, at	24,904 44
	—
Her <i>whole</i> share, then, before the \$10,000 payment, must have been	34,904 44
Every heir had the same share, except Mr. J. Wright Boott, to whom the store in State-street was given in addition, and the heirs were, in number,	9
	—
According to this, the total property, in which the heirs had an interest, was	314,139 96

<i>Brought forward,</i>	\$314,139 96
The only real estate, in which they had an interest, was the mansion-house, appraised in the inventory, at	24,000 00
 This makes the total of personal property, which the ex- ecutor had received, and for which he was bound to account with the heirs, sooner or later,	290,139 96
But the account of 1844 acknowledges the receipt from Kirk Boott & Sons, of, only,	\$116,783 95
and from Boott & Lowell,	69,389 99
	186,173 94
Hence, there was received by the executor, if Mr. Low- ell's estimate was correct in 1831, but not accounted for in Mr. Lowell's probate account of 1844,	103,966 02

This sum, it will be observed, is just about enough to cover the \$11,000 trust fund for the aunts, which wholly disappears between the accounts of 1818 and 1844, and also to cover the additional \$90,000 of distributable capital, (beyond what the account claims to have been distributed,) which I contend had been not only received by the executor, but also, mainly, distributed, so far as the shares of some of the heirs were concerned, though not in respect to others.

Mr. Lowell, to be sure, speaks of Mrs. Lyman's share, so estimated in 1831, as "*coming from the trust funds*," and as being a "*reversion*." But how does this hold? If he means, by "*trust funds*," not general funds in the hands of the executor, but the particular annuity funds, only, they amounted to no more than \$111,111 12 ;—while the nine shares, at \$24,904 44 each, (the allowance for Mrs. Lyman's share *after* the \$10,000 payment,) amount to \$224,139 96. If we suppose the mansion-house included in the \$224,139 96, as I presume it was, that, at its appraised value, would take off \$24,000 from the total sum; but this would, still, leave upwards of \$200,000 for the estimated *reversionary* value, according to Mr. Lowell, of trust funds, which, as a *present* property, amounted to about \$111,000 only. The mansion-house, instead of its original appraisal, may, perhaps, have been estimated, in 1831, at \$30,000,—it was not worth more;

but, if so, that valuation of the real estate would take off only \$6000 more from the estimate of personal property, leaving \$194,000, still, for the sum, at which these trust funds of \$111,000 must have been estimated, *according to Mr. Lowell*, though then subject to a life-estate, having, by ordinary chances, a long course of years to run.

This is impossible. It is obvious that something, besides one ninth of the mansion-house and one ninth of the annuity funds, must have been taken into account, to bring Mrs. Lyman's outstanding share up to near \$25,000, at the time of the settlement in 1831. Mr. Lowell says, himself, that her reversions, "*when realized*," at her mother's decease, will be only about \$16,000. He gets at that sum by calling the trust funds \$100,000 only, and calling the mansion-house \$46,000, because it produced \$46,000 in 1844, though nobody would have appraised it, in 1831, at more than \$30,000. But, admitting, as he does, that her reversions in the mansion-house and the trust funds, when realized, could not exceed \$16,000, how came they, twenty years before they were to be realized, to be valued at \$25,000? Why does not Mr. Lowell tell us, what else was estimated, *besides these reversions*, to bring up Mrs. Lyman's share to near \$25,000? Since he neither tells us how this was, nor shows the papers, which would explain the fact, we are, at least, free to speculate; and I ask the reader to suppose that all the property, in which the reversions lay, was estimated at something like the following valuation:—

Trust fund for Mrs. Boott,	\$100,000 00
Trust fund for one of the aunts, (for one at least was living in 1831,)	5,555 56
Mansion-house, fairly valued, for that time, at not exceeding	30,000 00
Total <i>reversionary</i> property, to come into possession at the decease of the annuitants,	135,555 56

One ninth of this sum is about \$15,000; which corresponds with an estimate of a *reversionary* share made by Mr. Kirk Boott in 1826, as will presently be seen. [Post, p. 501.]

Yet, Mrs. Lyman was allowed about \$25,000 ! What was that extra \$10,000 for ? What was it but Mrs. Lyman's share of moneys, in the executor's hands, already due and payable, but which had never been paid over ? For this was in 1831, and the \$10,000, which the account of 1844 asks an allowance for, had been paid to Mr. Lyman in 1821. If there is any truth, then, in Mr. Lowell's statement of the valuation of Mrs. Lyman's share of the estate, in 1831, it is certain, that Mr. Boott, as executor, had owed her, in 1821, about \$20,000. Of this, \$10,000, only, was paid at that time, the other \$10,000 remaining unpaid, till it was included in this settlement of 1831.

Now I ask the reader to connect this unintentional admission of the " Reply" with the fact before shown, [Ante, p. 480.] that the *deed of Lyman & Ralston*, conveyed, in express terms, *present*, as well as reversionary, interests ; and to connect both with the evidence of Mr. Boott's statements, ten years before, that a divisible share would, probably, be \$20,000. [Ante, Ch. 45.] It is certain that Mr. Boott's debt, as executor, to Mrs. Brooks, was, originally, as large as his debt to Mrs. Lyman. Is it not, then, certain, that *I did not misunderstand* Mr. Boott, when he told me, in 1821, that the estate was " still unsettled," but soon would be, and that *I* should receive, probably, \$20,000, certainly something near it, for Mrs. Brooks's portion ? Does not Mr. Lowell, himself, make it certain, that Mr. Boott, did *not* intend to speak of her *eventual* rights and interests, but of a sum, which would be presently payable, as soon as certain outstanding affairs of the estate could be closed ? So *I* understood him at the time. So Mr. Ralston, Mr. Lyman, and Mr. William Boott understood him at other times, concerning their respective shares. So Mr. Boott meant to be understood, and so Mr. Lowell *knew* he meant to be understood ; since he himself, by his own showing, *acted* for Mr. Boott upon that understanding in 1831, when he not only admitted, but virtually *paid*, the debt, to that amount, in the settlement with Mr. Lyman, and, as may be reasonably inferred, in the settlement with Mr. Ralston.

also, the two settlements being contemporaneous, and, in fact, parts of one and the same transaction.

And so Mr. Kirk Boott understood, when he constantly spoke, in a series of letters, cited above, of his brother's indebtedness as executor, notwithstanding that \$10,000 had been paid to all the heirs, except to Mr. William Boott, and that \$20,000 had been paid to some of them, as the reader will soon see. And so Mr. Kirk Boott, also, well understood and intended, when, in the letter cited, and perverted by Mr. Lowell, to mislead cursory readers, that gentleman proposed to his brother a particular scheme, for the discharge of that remaining indebtedness to some of the heirs, and for the security of others.

Perhaps the reader will think, that I have, now, held Mr. Lowell pinned to this point long enough, and that I have sufficiently convicted him out of his own mouth, as I said I generally could !

CHAPTER L.

THE CHARGE AGAINST ME OF A DISINGENUOUS USE OF MR. KIRK BOOTT'S LETTERS. HIS LETTER OF SEPTEMBER, 1826. HIS SETTLEMENT WITH MR. J. WRIGHT BOOTT.

I must now exhibit another of Mr. Lowell's comments. He cites a letter of Mr. Wells, containing the statement, that, "He [Mr. J. Wright Boott] has, probably, given to all much more than they were entitled to receive from their father's estate ;" and proceeds thus :—

"Mr. Brooks endeavours to create the impression that the late Mr. Kirk Boott viewed the matter differently, by quoting and emphasizing the following passages from Mr. Kirk Boott's letter to himself of

February 8, 1826, above cited: ‘As he [Mr. Wright Boott] is preparing to settle the estate and pay over the balances,’ (p. 35); and again (p. 36,) ‘As Eliza’s portion will be paid you in a few months, perhaps you will be willing to take this loan.’

“Nothing can be more disingenuous than the use that is made of these passages.

“Mr. Kirk Boott had been a member of the house, and knew that Mr. Brooks had received no money from his brother; he did not know, as *Mr. Brooks tells us in the very next line*, that Mr. Wright Boott had given his note to Mr. Brooks.

“‘This led to a conversation when we met soon after; and then, finding that I held Mr. Wright Boott’s note for \$10,000, he proposed to take that, as an equivalent, for his purpose, to money.’ (p. 36.)

“Can any man doubt that the portion, which Mr. Kirk Boott referred to in his letter, as soon to be received by Mr. Brooks, was this same 10,000?” [L. pp. 56, 57.]

When I am charged with a disingenuous use of Mr. Kirk Boott’s letters, and charged by Mr. Lowell, I do not think it necessary to answer the charge, after what has been shown. But I wish the reader to see another specimen of the various modes of using letters. I will first print the letter referred to :—

LETTER—KIRK BOOTT to EDWARD BROOKS.

East Chelmsford, Feb. 8, 1826.

DEAR SIR,—In making the following communication, I beg you will not consider me as preferring any claims or pretensions to your consideration, in consequence of our connection; but regard it solely in the light of a business transaction between man and man.

From recent communications with my brother, I find that *our losses in business proved very heavy*, and that he is more in advance for me than I expected. As he is preparing to settle the estate and pay over the balances, it is incumbent on me to come to a settlement with him; and to do this, I must either dispose of the greater part of my manufacturing stock, or procure a loan. The latter, I think, is the preferable course, if I can effect it, as the disposal of any part of my interest in Chelmsford stock, would not only be highly disadvantageous in a pecuniary view, but would, at the same time, subject me to misconstruction, while I continue the Agent. I am, therefore, desirous to borrow \$8,000, the interest upon which I will pay semi-annually, and secure the principal upon my share of the estate, after the demise of my mother, or, if its present value can be calculated, I will make it over at its worth, at once. It will amount to something like \$15,000, and perhaps, if real estate keeps its price, to something more.

As Eliza’s portion will be paid you in a few months, perhaps you may be willing to take this loan. If, however, you have or wish to make other arrangements, you will frankly say so, and I shall cheer-

fully seek the accommodation from some other quarter. I would rather negotiate with you than another, for it is not pleasant to expose one's poverty further than is unavoidable. Think the matter over, and if you can give me an answer at once, drop me a line, (marked private, to prevent its being opened in my absence,) or you can wait till I see you.

Yours, very truly,

KIRK BOOTT.

This letter, it will be observed, was written in 1826; which was long before any suspicion of the integrity of the trust funds, or of any inability of Mr. J. Wright Boott to pay over to the heirs whatever they might be entitled to receive, had arisen. His embarrassments were not disclosed till 1830. The losses in business, which Mr. Kirk Boott speaks of, had been incurred by a mercantile house, (Kirk Boott & Sons, No. 2,) in which Mr. J. Wright Boott and himself, and another brother, were the only partners. It was formed in March, 1818, and was dissolved January 1, 1822, upon the occasion of Mr. Kirk Boott's removal to Chelmsford. The advance, spoken of as made by Mr. J. Wright Boott for Mr. Kirk Boott, was partly in settlement of the business of that house, and partly on other accounts, as will presently be apparent. In December, 1823, that is, nearly a year after the dissolution of the house, and more than a year, I believe, after Mr. Kirk Boott had, in fact, removed to Chelmsford, and while Mr. J. Wright Boott was a member of the new house of Boott & Lowell, (the successors of Kirk Boott & Sons, No. 2,) Mr. J. Wright Boott gave me his note, as before mentioned, on demand, for \$10,000, on account of Mrs. Brooks's portion.

Now, Mr. Lowell's first comment is, that "Mr. Kirk Boott *had been a member of the house, and knew* that Mr. Brooks had received no *money* from his brother." How does that follow? How did the fact that he *had been* a member of a certain house, in 1821, enable him to know any thing in 1826, respecting a payment in 1823? What had the *house* to do with a payment by the *executor*? And what, especially, had a house, which came to an end with the year 1821, to do with a payment to me in 1823? If the business

of the executor was transacted through a house, it must, after 1821, have been the house of Boott & Lowell, so long as it lasted. In that house Mr. Kirk Boott never had any concern.

The next comment is, that “He *did not know*, as *Mr. Brooks tells us* in the very next line, that Mr. Wright Boott had given his *note* to Mr. Brooks ;” and, in proof of this, my statement is quoted, that, in a conversation, soon after the writing of the letter, Mr. Kirk Boott “*finding that I held* Mr. Wright Boott’s note for \$10,000, proposed to take that, as an equivalent, for his purpose, to money.”

Now that, which Mr. Kirk Boott did not know, in 1826, (according to a fair interpretation of my language,) was, that *I still held* Mr. J. Wright Boott’s note, given to me in 1823, payable upon demand. And that, which Mr. Lowell *did* know, was, that, instead of my having stated, as he affirms, that Mr. Kirk Boott was ignorant of the fact that a *note* had been *given*, I stated, expressly, *circumstances*, which went to show his full knowledge, *at the time*, of the whole transaction. This appears by a preceding passage of my pamphlet, in which, after having mentioned Mr. J. Wright Boott’s information to me, at the time of my marriage, in 1821, (viz., that the estate “was about to be *settled* very soon, and *divided among the heirs, and would give them \$20,000 apiece,*”) I narrated the transaction of the note as follows :—

“I neither made any inquiry, nor heard any thing more upon the subject, until about two and a half years after, when Mr. Wright Boott called upon me one day, which, by an entry in my books, I am enabled to fix as December 29, 1823, and handed me his own promissory note for the sum of \$10,000, payable on demand with interest, and a check for \$1,683 57. The former, he said, was on account of my wife’s portion in her father’s estate, and the latter for interest upon the sum since the day of my marriage ; and he requested me, if I had no objection to taking *his note*, to give a receipt to him, *as executor*, for \$10,000 received on that account. This I gave without hesitation ; and neither made any inquiry, nor received any information, as to the expected residue. But I found, after Mr. Boott had left me, that the check was for compound, instead of simple, interest, which I thought wrong ; and I immediately wrote him, enclosing a check for the difference, as a mistake ; but he sent it back to me and refused to receive it. I at first intended to insist on his accepting it ;

but, *on mentioning the occurrence to Mr. Kirk Boott*, he advised me by no means to do so, as his brother would certainly take offence at it, and, as *this was only a partial payment*, it might be corrected in the *general settlement*, if I chose." [B. pp. 34, 35.]

The state of Mr. Kirk Boott's knowledge, therefore, in 1826, when he applied to me, in his foregoing letter, for a loan of \$8000, appears to have been, that Mr. J. Wright Boott had paid me, in 1823, \$10,000, on account of Mrs. Brooks's portion, by his own note, on demand, with a check for the interest since my marriage ; and that note, being upon demand, Mr. Kirk Boott naturally supposed, must have been taken up soon after. In this state of information and belief, he writes the letter, which says, that Mr. J. Wright Boott "is preparing to settle the estate, and pay over the balances ;" and that this made it incumbent on him, (Mr. Kirk Boott,) to settle with Mr. J. Wright Boott, for larger advances and losses in business than he had expected. To enable him to make that settlement with his brother, he wished to borrow \$8000, and says, "*As Eliza's portion will be paid you in a few months*, perhaps you may be willing to take this loan."

What did he, then, mean by the "*balances*" to be paid over, and the "*portion*" to be paid to me ? Mr. Kirk Boott knew very well, that \$10,000 had been paid by the executor, several years before, to Mr. Lyman, and to Mr. Ralston, in money, and, by the executor's personal note *on demand*, to me, for which receipts were given, discharging the estate *pro tanto*. He knew all this in 1830—1, when, we have seen, his letters uniformly speak of the claims of the heirs, and, especially, of the claims of Mr. Lyman and Mr. Ralston, to *further payment*.

What "*balances*" could there be to "*pay over*" to *them*, if \$10,000 was a full share ? And how could he say that "*Eliza's portion*" would be paid to me "*in a few months*," if he referred to the payment of the \$10,000 due upon my *note*, of which I could have required payment on any day ?—and which, indeed, was itself payment of "*Eliza's portion*," *so far as it went*, since I had consented to receive it as such, and had discharged the estate for that amount. Or, since my

consultation with him, in 1823, was only upon the amount which had been allowed to me for *interest*, if he did not know that the principal payment was made by *note*, (as Mr. Lowell says I admit,) he (Mr. Kirk Boott,) must, in that case, have supposed that I had received \$10,000 in *money*; and, if so, I ask again, what did he mean in 1826, when he speaks of the *balance* of "Eliza's portion" *to be paid* in a few months?

The letter, therefore, of 1826, instead of being proof that Mr. Kirk Boott considered \$10,000 to be a payment in full, is, in truth, a distinct declaration of his understanding, that, after a payment of \$10,000, and after the furnishing of a house, (if that belonged to the patrimony,) there was still a further balance, coming, "in a few months," to Mrs. Brooks from her distributive share, sufficient to induce me to engage for a loan of \$8000, and that other "balances" were to be paid over to other heirs, who had received "\$10,000 each, and upwards," as the "Reply" admits. [L. p. 57.] And for what, but these "balances," due to somebody, did the heirs sign the release of 1833? I may conclude, therefore, in Mr. Lowell's own language, with the addition of one word:—"Can any man doubt, that the portion, which Mr. Kirk Boott referred to, in his letter, as soon to be received by Mr. Brooks, was" *not* "this same \$10,000," which had once, to Mr. Kirk Boott's knowledge, been paid *by the executor*, and for which I then held Mr. J. Wright Boott's *private note*?

The reader, looking back upon the various letters of Mr. Kirk Boott, and upon the comments, which have now been shown to him, will find himself fully prepared, I think, to settle this question,—Who makes a disingenuous use of these letters?

The letter, last cited, naturally connects itself with the settlement, then anticipated, and which, soon after, took place, between Mr. J. Wright Boott and Mr. Kirk Boott.

The result of Mr. Kirk Boott's negotiation with me was, that, not being able to lend him the money he wanted, I transferred to him, instead, the \$10,000 note of Mr. J.

Wright Boott, as before stated, and received, in exchange, Mr. Kirk Boott's note for the same sum, which I held, without other security, until two or three years after his death, in 1837. It was finally paid, at the convenience of his executor, in the course of the settlement of his estate. Mr. J. Wright Boott's note, being on demand, was, of course, as good as money to Mr. Kirk Boott, for the purpose he had in view; and when he came to a settlement of accounts with Mr. J. Wright Boott, it was included in that settlement, and given up to the promiser. This operated as payment, from Mr. Kirk Boott to Mr. J. Wright Boott, to the extent of \$10,000; and my transaction, with Mr. Kirk Boott, had the effect of a loan of that sum to him, for his personal accommodation.

So far, all is clear. But, what was this settlement between the brothers? What did it embrace? The evidence of it is, of course, in Mr. Lowell's possession, as the executor of Mr. J. Wright Boott. He does not produce it. He prefers that we should still grope "in utter darkness and ignorance," [L. p. 72.] except so far as he may happen to enlighten us, by an occasional hint, always given in the course of an answer to some other point in the case than that, to which, for purposes of information, the reader would naturally look.

The letter of Mr. Kirk Boott clearly describes the general object and purpose of the settlement, when it says,—"From recent communications with my brother, I find that *our losses in business proved very heavy*, and that he is *more in advance for me* than I expected. As he is preparing to settle the estate, and pay over the balances, it is incumbent on me to come to a settlement with him." That is, Mr. Kirk Boott's declared object was, to pay to his brother his proportional share of the losses in their former partnership business, and to reimburse whatever sums had been formerly advanced by his brother, for his accommodation.

What was the amount due for these losses and advances? My former inference, from such facts as had then come to my knowledge, appears, together with a part of Mr. Lowell's

comments upon it, in the following extract from the "Reply":—

"The process, by which he [Brooks] arrives at this, is a very strange one. Not content with putting down the sum that Mr. Kirk Boott borrowed of him, for this specific purpose, \$10,000

"He adds to it the amount of Mr. Kirk Boott's patrimony, which he assumes without a shadow of evidence, and, as I shall presently show, without a shadow of foundation in truth, to have been lost in the business, and which he sets down at double its real value, 20,000

"Finding, also, that Mr. Kirk Boott, about this time, transferred to his brother twenty-one shares in the Boston Manufacturing Company, (shares, by the way, that had belonged to Mr. Wright Boott all along, and had been taken in Mr. Kirk Boott's name for a specific purpose, as I shall show, in 1823,)—finding, I say, this transfer, Mr. Brooks eagerly seizes upon the coincidence of dates, and puts it down as a reimbursement for these imaginary losses, 27,300

\$57,300
"A more monstrous assumption was, perhaps, never presented, as the foundation of a serious charge." [L. p. 47.]

Let us examine the monstrosity of this assumption.

The first item,—the \$10,000 borrowed by Mr. Kirk Boott, or, rather, his purchase from me of Mr. J. Wright Boott's note, by his own note for that amount, and "for this specific purpose,"—seems not to be questioned by Mr. Lowell as one item, which went into the settlement.

The second item,—the amount of Mr. Kirk Boott's patrimony,—Mr. Lowell says I assume to have been included in what he calls "these imaginary losses" "without a shadow of evidence," and "without a shadow of foundation in truth," and that I set it down "at double its real value."

As to my assuming that it was *included in the settlement*, Mr. Lowell elsewhere admits that this assumption is not absolutely "monstrous;" for he says himself:—

"It is *not to be presumed* that Mr. Kirk Boott, himself a most exact man, made that settlement *without receiving credit for the precise amount of his patrimony.*" [L. p. 98.]

How unfortunate, then, that Mr. Lowell should not have thought of producing the evidence of that settlement, that we

might see, at a glance, what “the precise amount of his patrimony” was ! It might have saved a great deal of discussion. The *amount*, at any rate, seems to be the only substantial question, left open between us. Some *shadows* of evidence respecting it, I think, the reader has already seen ; and he will see more. Mr. Lowell, indeed, promises to show, that the idea of Mr. Kirk Boott’s patrimonial share having been *lost* in former business of the house, is “without a shadow of foundation in truth.” But he shows no such thing, by any evidence whatever, except his own assertions, as will appear in the sequel. I leave this point for the present, and until further facts have been introduced.

The third item relates to the same twenty-one shares of Boston Manufacturing Company, which have been already spoken of as purchased by Mr. Kirk Boott, in 1823, for his brother’s account, to equalize interests, held, or represented, by his brother, in the Merrimack and Boston Companies, and, which were, afterwards, taken by Mr. J. Wright Boott from his brother Kirk, in 1826, at \$1300 a share ; at which rate they are charged to the estate in the executor’s account of 1844. [Ante, Ch. 38.]

Now, the setting down of this item to the account of Mr. Kirk Boott, as a part of the payment for the “imaginary losses” of the house, Mr. Lowell affects to regard as a “monstrous assumption,” for the reason that these shares “had belonged to Mr. J. Wright Boott, all along, and had been taken in Mr. Kirk Boott’s name for a specific purpose, in 1823,” as he promises to show. What he does show, on that point, has been already examined ; [Ante, Ch. 38.] and, it will be remembered, that it appeared from Mr. Lowell’s showing, when he found himself called upon to explain the charge of these shares to the estate, in the account of 1844, at nearly double their then market value, that Mr. Kirk Boott took them in his own name, during his brother’s absence from the country, in 1823, and that he paid for them, at the time, by the sale of twenty-one shares of Merrimack stock, belonging to himself. [Ante, p. 391.]

All this, though done by Mr. Kirk Boott in his own name,

it is said by Mr. Lowell, was intended, at the time, (in 1823,) to be for the account of his brother, then in Europe. His brother returned in the course of that year ; for, we have seen, that, in December of that year, Mr. J. Wright Boott gave me his note for the \$10,000 ; yet, nothing further appears to have been done about these twenty-one shares of Boston stock, (said to have been bought for him in 1823,) till March, 1826, when they appear to have been transferred by Mr. Kirk Boott to Mr. J. Wright Boott, *individually*. This, the record of transfer shows ; [B. App. p. 32.] and this, Mr. Lowell does not dispute. But, although the purchase of, and payment for, these shares, by twenty-one shares of Mr. Kirk Boott's Merrimack stock, in 1823, is said to have been for the account of Mr. J. Wright Boott, it leaks out, in the course of Mr. Lowell's explanations, that, when the brothers came to a settlement of accounts, in March, 1826, the settlement was such, that Mr. Kirk Boott *took to his own account* the sale of his own shares of Merrimack in 1823, instead of charging them to his brother as a sale for *his* account. [L. p. 71.]

This being so, I ask, what, on Mr. Lowell's showing, was the consideration to Mr. Kirk Boott, for his transfer to Mr. J. Wright Boott, in 1826, of the twenty-one shares of Boston stock, which Mr. Kirk Boott had purchased and paid for, in 1823, by his own shares of Merrimack ? What did Mr. Kirk Boott get for his Merrimack shares ? Or, Mr. Kirk Boott taking that sale of Merrimack shares to his own account, as a sale for himself, how did Mr. J. Wright Boott pay Mr. Kirk Boott for the twenty-one shares of Boston, transferred by him to Mr. J. Wright Boott in 1826 ? Did any money pass between them, or was it a mere credit in account ? The reader will presently see that neither money, nor property, is likely to have passed, because Mr. J. Wright Boott was not, at that time, in a position to part with either, unnecessarily, and because he was in advance for Mr. Kirk Boott to a larger amount. I infer, therefore, now, from Mr. Lowell's information, connected with other evidence, as I did in my former pamphlet, with less evidence before me, that the price of these shares was credited to Mr. Kirk Boott in account ; and

I infer from Mr. Kirk Boott's letter to me, of Feb. 8, 1826, [Ante, p. 501.] and from the near correspondence of time, and the absence of any other subject matter of account shown by Mr. Lowell, that this transfer was a part of the general settlement between the brothers of their dealings, as partners, and otherwise, and that this credit was passed, in Mr. Kirk Boott's favour, as so much payment for the advances, and for his share of the losses, spoken of in that letter. I am confirmed in this inference by Mr. Lowell's omitting to show any other way, in which Mr. Kirk Boott was paid for the shares.

Without, of course, pretending to know, or guess at, *all the items* of such an account, I may at least be allowed to conjecture, till Mr. Lowell shows something to the contrary, which he has not yet done, that its principal features might be represented somewhat as follows :—

A PRO FORMA ACCOUNT.

	Mr. Kirk Boott in account with Mr. J. Wright Boott.	Dr.
From 1817 to 1826	For advances made by J. W. B. on K. B.'s account, and for K. B.'s share of loss on the copartnership business of Kirk Boott & Sons, No. 2, as finally ascertained and settled by Boott & Lowell,	\$57,300
	Contra, Cr.	
	By amount due from J. W. B. as executor of Kirk Boott, senior, for Mr. Kirk Boott's distributive share of the estate,	20,000
	Dr. Balance brought down for adjustment,	37,300
1826		
March 1.	Contra, Cr.	
	By 19 shares Boston Manufacturing Com- pany, transferred at this date from K. B. to J. W. B., at \$1300 per share,	\$24,700
"	By J. W. B.'s note of December 29, 1823, endorsed by Ed. Brooks to K. B. and now given up by him to J. W. B.	10,000
March 17.	By two more shares Boston Manufacturing Company, transferred at this date from K. B. to J. W. B. at \$1300 per share, being in final settlement of this account,	2,600
		37,300

Now if this, or something like it, does not constitute the substance of the settlement, I challenge Mr. Lowell to produce the papers, and let us see what the actual settlement was, and how it entitles Mr. J. Wright Boott, (which is a point I have a *right* to know,) to charge these twenty-one shares, in 1844, *to the estate*, at \$1300 a share, when they were not worth, at the time he so took them, more than \$900 a share, [Ante, p. 393.] nor worth, in 1844, (when they were first charged to the estate, so far as appears,) more than \$725 a share. [B. App. p. 55.]

But Mr. Lowell, having the papers of Mr. Boott in his own possession, and also having in his possession the books of Boott & Lowell, (who were liquidators, as will be seen, of Kirk Boott and Sons, No. 2,) instead of producing proof of the facts, which those papers and books might disclose, prefers to argue upon possibilities and plausibilities, and upon his own assertions of extrinsic facts, many, if not most, of which I shall show to be erroneous, and endeavours to satisfy his readers, by these means, instead of the better evidence at his command, that I am under another mistake, "as usual," and that no such amount could have been due from Mr. Kirk Boott to Mr. J. Wright Boott, as I suppose. To this I answer, produce the proofs, which are in your keeping.

The "Reply" suggests, however, that I must have been aware that making out so large an amount of *loss* proved too much, and that I, therefore, put in "a faint alternative," that this sum "might have been, in part, a repayment for overdrafts." It is added :—

"As the question of overdrafts has no bearing whatever on Mr. Brooks's issues with Mr. Boott, I shall only deal with the other alternative. And this I have the better right to do, because it was Mr. Brooks's evident design to impress that view of the case upon his readers. For this purpose he emphasizes the word "loss" in the following paragraph :—'Was this the *loss* of one out of three of the partners? Or how much more than the others had that partner drawn out?' (p. 114.)

"Observe what Mr. Brooks would have us believe. If Mr. Kirk Boott's losses were \$57,000, those of the firm could not have been less than \$171,000; and as, on the same page, he tells us that he cannot 'perceive how Mr. Wright Boott could have had much more' proper-

ty than Mr. James Boott, that is, ‘nothing except the dividend due to him from his father’s estate,—the inference is, that this loss fell upon that estate. Now that estate is not represented in Mr. Brooks’s exaggerated estimates at over \$180,000, beyond the trust funds and real property. Of course the whole, or nearly the whole, was absorbed in those losses. And yet he does not deny, that Mr. Wright Boott has distributed among the heirs \$90,000 (p. 109); that is to say, that, out of nothing, he has contrived to pay a sum of \$90,000! And such estimates and inferences as these, Mr. Brooks and his learned and astute advisers gravely present to the world in impeachment of accounts, which his brother has presented, on oath, at the probate office.” [L. pp. 48, 49.]

Now, so far from alleging, that each partner’s share of the mere *loss*, in the mercantile business of the firm, was \$57,000, I expressly put, as a call for information, the alternative query, “Was this the *loss* of one out of three of the partners? Or, *how much more* than the others had that partner drawn out?” And my object, in emphasizing the word “*loss*,” was precisely the reverse of that, which Mr. Lowell affects to suppose. I emphasized, not for the purpose of leading the reader to believe, that this large sum was only one third of the actual loss of the firm in their mercantile business, but to draw his attention to the fact, that it was too large to be probable, and to pave the way for the inquiry respecting the amount of over-drafts and advances on other accounts. I accordingly spoke, in that immediate connexion, of the monies of the estate, which the executor “had improperly used, and lost in that concern, [the partnership,] or had *permitted* the other partners *to draw out of it.*” And I further said:—

“The share of that loss and *over-draft*, which fell upon Mr. Kirk Boott, whatever it was, *beyond his own dividend from the estate*, was undoubtedly made good to Mr. Wright Boott at the time, and in the manner above stated.” [B. p. 115.]

And the inference I came to was:—

“The extent of *loss*, which seems to be indicated by Mr. Kirk Boott’s settlement, so far as the data are known, and, even supposing him to have *largely overdrawn beyond the other partners*, is quite sufficient to account for a reduction of the promised dividend of the estate from \$20,000 to \$10,000.” [B. p. 115.]

Instead, therefore, of having supposed, as Mr. Lowell pretends, a mercantile loss by the house, of \$171,000, I supposed, as appears above, that Mr. Kirk Boott's share of the loss, and his over-draft, (beyond the \$20,000, which I considered him entitled to draw for his patrimony,) were, *taken together*, \$37,000 only; and how much of that was a share of partnership profit and loss, and how much was over-draft and advance on other accounts, I did not pretend to determine. I only pointed out the fact, that there was margin enough in that settlement, to infer actual loss, sustained by Mr. J. Wright Boott for *his* share of the partnership business, sufficient to account for the reduction of the promised dividend from \$20,000 to \$10,000, in respect to those heirs, who had been promised \$20,000, and who received \$10,000 only, or less.

To whom had it been promised? To nobody, so far as I know, except Mr. Lyman, Mr. Ralston, Mr. William Boott, and myself.

To whom had \$20,000 been *paid*? In answer, I pray the reader now to note, that, although in my former pamphlet, I avoided speaking, as far as possible, of the money concerns of other members of the family, I believed, when I wrote, and I believed, at the time of the voluntary release of all my claims on Mr. J. Wright Boott, in 1833, and I believe still, that most of the heirs received, in one form or another, their full \$20,000 each, of the estate's money. My belief is, that nobody was, *eventually*, left short of that sum, except Mrs. Brooks,—who had received only \$10,000, unless the furniture of her house was intended as part of her patrimony,—and Mr. William Boott,—who had got nothing, except what his brother had been pleased to pay for him in Europe, or elsewhere, so far as those payments were a just and lawful charge upon *his* patrimony. All the rest of the deficiency in the executor's cash fell, as it happened, upon the annuity funds,—in which the heirs had a *reversionary* interest only,—and was made up, so far as it ever has been made up, only by applying Mrs. Boott's income to pay off the incumbrances of Mr. Boott's debts, and in other ways to restore the capital of her particular trust fund.

I cannot, from the nature of the case, be expected to produce *conclusive proof* of the sums paid to, or for, the several heirs. The evidence is not in my keeping, nor accessible to me. But, I do not believe, that any one of the heirs will be found to deny the fact now suggested. More or less of evidence, touching some of them, has been, and will be, shown; and I demand of Mr. Lowell, if he wishes "to elicit the truth," [L. p. 3.] that the receipts and other evidence in his possession, so far as they may go, of all payments to, or for, and of all settlements with, the several heirs, be produced, and we shall then be better enabled to see who is right, and who wrong, on this point.

The truth, I believe to be, that Mr. J. Wright Boott, adopted, practically, in the distribution of his father's estate, the principle of "first come, first served." He, unquestionably, designed, and intended, to pay to all, what all were equally entitled to receive. They, who called for money, while means of payment were at easy command, were permitted to take up sums, which, probably, amounted to their full shares, perhaps more. Mr. Wells, at any rate, in the letter above-mentioned as cited by Mr. Lowell, says, "He, [Mr. J. Wright Boott,] has, probably, given to *all*, much more than they were entitled to receive from their father's estate." [L. p. 56.] If for "*all*," we should read "*some*," I might, perhaps, be disposed to adopt Mr. Wells's opinion, so qualified. What foundation there may have been for it, in his own case, he, at any rate, best knows. I think it will, at least, appear, that he received his full share, after deducting the charges, made against him by the testator, for advances in his lifetime, in addition to a large sum, which was forgiven. Dr. Francis Boott, it was always understood and said in the family, received, and took with him, \$20,000, at the time of his removal to London, in 1818. Mr. Kirk Boott, and Mr. James Boott, while in partnership with Mr. J. Wright Boott, enjoyed the benefit, I think it will appear, of considerably larger sums, either taken up by them, or used for their individual accounts, and for their respective shares of a joint account, in which all three were interested. These were

all, parties, whose occasions and opportunities for the use of large sums of money occurred before the affairs of the estate, and Mr. J. Wright Boott's own affairs, had fallen into a state of inextricable embarrassm^t, which, I have no doubt, his large advances to, and for the account of, some of them contributed to cause. I am confirmed in this by Mr. Lowell's former remark, that Mr. J. Wright Boott could not have settled the estate without making his brothers bankrupt,—meaning, of course, *some* of his brothers. But, *after* the losses of Kirk Boott & Sons, No. 2, and of Boott & Lowell, had been encountered by Mr. J. Wright Boott; *after* his over-advances to some of the heirs had been made; *after* a course of great expenditure on the family account had been going on for years, without due regard to the source whence monies, furnished by him, came, or to the proportion justly belonging to each member of the family; and *after* the estate's money had begun to go freely into the business of the foundry,—those of the heirs, whose occasions for large sums of money, and opportunities to control them, arose at that late period, if at all, received the whole of their supposed shares, or half, or nothing, according to the necessity of circumstances.

Mr. Kirk Boott, it appears by his own letter, was a debtor to Mr. J. Wright Boott, instead of a creditor, in 1826; and the \$20,000, due from the executor to him for his patrimonial share, became merged, of course, in the settlement of the larger sum, due from him to the executor, either in that capacity, or personally; for Mr. Lowell and I agree on this point, that, "it is not to be presumed, that Mr. Kirk Boott, himself a most exact man, made that settlement without receiving credit for the precise amount of his patrimony," [L. p. 98.] at least so far as it had been disclosed to him. Mr. James Boott, for a like reason, probably received his full patrimonial share in the same way. Messrs. Lyman and Ralston had each received \$10,000, on account, in 1821—2, as I knew at the time. They had received no more in 1826; but they afterwards received, in 1831, their additional \$10,000 each, in the manner which has been shown, from the "Reply;" [Ante, Ch. 49.] because, as purchasers of Mr

Boott's interest and investment in the foundry, debtors to him in a larger sum, against which, due to each of them, was a proper offset in payment realized their full shares, provided the founders were worth what they paid for it. But neither Mrs. Boott, nor Mr. William Boott, had any such means of payment, after Mr. J. Wright Boott's embarrassments had arisen, and, consequently, they were never paid, except to the extent, and in the manner before stated; not because Mr. J. Wright Boott had any indisposition to pay them, also, in full, but because he had no longer the ability left, having lost all he was ever personally worth, together with a large amount of the funds of his father's estate, in the business done by him after his father's death, which was all a losing business, with the single exception of the Chelmsford speculation; and, out of that, he made little or nothing, *for himself*, as will presently be seen.

And here, it may be proper to note, in passing, a fact, which will be found material in another part of this case; namely, that Mr. William Boott and myself, were, probably, the *only* members of the family, who really *gave up* any thing considerable by the release of 1833; although, for the satisfaction of Mr. J. Wright Boott's feelings, as well as from uncertainty respecting the true state of accounts, it was thought desirable that all the heirs, who had not already released him, should join in that act.

These statements anticipate, in part, the evidence, on which they are founded. For the reader will observe, that I do not profess to have personal knowledge of the facts stated. In the absence of proper accounts, I am, necessarily, driven to inferences, from such evidence as I show, and the reader must judge, as we proceed, how far they are well founded, bearing in mind that Mr. Lowell has, in his own hands, to a great, if not to the fullest extent, the means of either verifying or contradicting them, conclusively. At present, I call the reader's attention to this: that Mr. Lowell *waives and evades*, in his "Reply," all statement and inquiry about *over-drafts* by Mr. Kirk Boott. I call attention, also,

to the shallowness of the sophism, on which he argues that my premises, or assumptions, if he pleases, suppose a loss in trade of \$171,000 by the house, in which Mr. Kirk Boott was a partner ; and that, consequently, when I admit payments to the heirs of as much, in the aggregate, as the account of 1844 claims to have been paid to them, I say, in effect, of Mr. J. Wright Boott, that "out of nothing he has contrived to pay a sum of \$90,000."

My belief, as I state it, is, that, out of the funds of his father's estate, he paid and lent, to some of the heirs, more than double that sum ; that he got back what he could, beyond the \$20,000, which each, who had more in his hands, was allowed to retain as a dividend from the estate ; that he was never worth much, in his own right, beyond his patrimony ; that, whatever he was worth, he lost in trade and speculation, within a few years after his father's death ; that he, also, embarked his father's estate, irregularly, in that kind of business ; and that the unfortunate consequence was the deficit, which has been shown to have existed, in 1830—31, in the annuity funds established by his father's will, and a further deficit upon the patrimonial shares of such of the heirs as had not previously received their \$20,000 each, except in the case of Lyman & Ralston, who, through a *subsequent* settlement of their partnership connexion with Mr. J. Wright Boott, obtained, nominally at least, the balance due to them from him as executor, which balance was properly included in that settlement.

This view of affairs, it will be seen, supposes a final deficit of twenty or thirty thousand dollars only, beyond the deficit of nearly \$70,000, which has heretofore been shown, in the annuity funds, as affairs stood in 1831. [Ante, p. 292.] The great error, therefore, of the account, according to my view of it, consists in the total omission of something like \$100,000 of assets, which had come to the executor's hands, and in the total omission, also, of something like \$70,000, paid away to certain of the heirs. The *receipt* of such a sum could not have been stated in the accounts, without showing what was done with it ; and that could not have been stated,

without disclosing, on the face of the account, great inequalities of distribution,—inequalities never intended by Mr. Boott, but which circumstances had rendered unavoidable.

This view coincides, also, with the excuse, above alluded to as formerly made by Mr. Lowell, for Mr. J. Wright Boott's omission to settle the estate, in the earlier years of his executorship; namely, that he could not then have done so, without making his brothers bankrupt. The probable truth of this suggestion, in respect to some of his brothers, will presently appear.

CHAPTER LI.

SUMMARY OF MR. BOOTT'S MERCANTILE CONNEXIONS, AND STOCK TRANSACTIONS.

THE time has now come, when it is proper to look into the history of Mr. J. Wright Boott's connexion with several mercantile houses, and of his principal pecuniary transactions, so far as they have yet been disclosed or discovered, leading to the state of affairs, shown by his own written statement, and by the admissions of the "Reply," to have existed in 1830.

First, for the undisputed facts, and facts proved by clear written evidence.

Mr. J. Wright Boott was in partnership with his father at the time of the death of the latter in January, 1817. They were importers of British goods, under the firm of Kirk Boott & Sons, which, for distinction's sake, I call Kirk Boott & Sons, No. 1. The business of that firm was required, by the will, to terminate March 19, 1818, up to which time it was to be carried on as before, notwithstanding the testator's death, except that so much of capital as might be

needful to construct the annuity funds, for Mrs. Boott and the testator's sisters, was to be withdrawn from trade and invested for that purpose. All this appears by the will; [B. App. pp. 5—9.] and Mr. Lowell is also a voucher for it. [L. pp. 22—25.]

Upon the expiration of the old house, by its limitation under the will, a new one was formed, consisting of Mr. J. Wright Boott, Mr. Kirk Boott, and Mr. James Boott, another brother then just of age, under the same firm, which I distinguish as Kirk Boott & Sons, No. 2.

This is admitted by Mr. Lowell; [L. p. 24.] and the following notice of the dissolution of the old, and the formation of the new, copartnership may be found in the Boston Daily Advertiser of that time, under the date of April 1, 1818.

NOTICE.

"The copartnership heretofore existing under the firm of Kirk Boott & Sons is dissolved; settlements to be made with *John W. Boott*. The business will be continued by the subscribers, under the firm of Kirk Boott & Sons. .

J. W. BOOTT.
KIRK BOOTT.
JAMES BOOTT."

The house of Kirk Boott and Sons, No. 2, lasted until Mr. Kirk Boott's removal to Chelmsford, (now Lowell,) at the close of the year 1821; and a new house was then formed, [L. p. 27.] as appears by the following newspaper announcement, under date of January 1, 1822:—

NOTICE.

"The copartnership, heretofore existing between the subscribers, under the firm of Kirk Boott & Sons, is this day dissolved by mutual consent. All persons indebted to the late firm are required to make immediate payment, and all persons having demands to present them, to *J. W. Boott*, or *J. A. Lowell*, who are duly authorized to settle them at No. 30 State street.

"The business of the *late* house will be *continued* at the same place, under the firm of *Boott & Lowell*.

J. W. BOOTT.
KIRK BOOTT.
JAMES BOOTT.
J. A. LOWELL."

The house of Boott & Lowell terminated July 1, 1824, as we are told, [L. p. 28.] though its books were, of course, kept open, for purposes of liquidation, some indefinite time longer. Mr. Lowell refers to them for an entry of a sale of stocks by Mr. Boott, in October, 1827; [L. p. 71.] but this I have already mentioned as a probable misprint for October, 1824. [Ante, p. 399.]

Mr. Boott, after the dissolution of that house, remained out of business, until he formed the connexion with Mr. Lyman and Mr. Ralston in the Mill Dam Foundry, in 1826. [L. pp. 75, 76.] From that connexion, it has been seen, he withdrew by the settlement of September, or October, 1831, and the business of the foundry was then transferred to the corporation, formed by Mr. Lyman and the Messrs. Ralston. [Ante, Ch. 33.]

Mr. J. Wright Boott was engaged in no business whatever, after his withdrawal from the Mill Dam Foundry.

Let me now repeat, in this connexion, what the probate office shows:—

Under date of Jan. 12, 1818, Mr. J. Wright Boott, as sole acting executor of his father's will, returned an inventory, consisting, entirely, of the real estate, and the household furniture, and other like chattels left to the widow,—nothing that the general heirs had an interest in, except the mansion-house, appraised at \$24,000, and that subject to the life estate of Mrs. Boott. [B. App. p. 13.]

The executor's first probate account, dated April 1, 1818, was passed May 11, 1818. [B. App. p. 14.] This, as before shown, stated investments made, agreeably to the will, in U. S. stock, Suffolk Insurance stock, and Suffolk Bank stock, sufficient to cover the particular trusts for the widow and sisters of the testator, and nothing more. That is, the stocks named, amounted, at par, to \$111,111 11; and, although the premiums paid bring up the foot of the account to \$116,783 95, these premiums appear to have been then treated as expense, in forming the funds. The account included \$10,000 for instalments on the bank stock, not then payable, but soon afterwards paid; and Mr. Lowell admits

that the trust funds were the only subject of this account. [L. p. 24.]

Nothing more appears in the probate office till the account of 1844, which charges the executor with the amount of the inventory, the above mentioned foot of the former account,—entered as cash received, at or before that date, from the firm of Kirk Boott & Sons, No. 1,—and the sum of \$69,389 99,—entered as “cash received of Boott & Lowell, in liquidation of the outstanding property of Kirk Boott & Sons,” at some date not specified. To this is added \$133 61, for the balance of gains and losses by sales, at dates not given, of the stocks named in the account of 1818 as held in trust by the executor. This, it will be remembered, is the whole debit side of the account of 1844, except for “income received on the trust fund for the widow, from March, 1818, to November, 1844 ;”—and it will also be remembered, that there is no connexion, traceable by the account of 1844, between the sums thus debited, and the property said, at the foot of that account, to be in the executor’s hands at that date, subject to the cash balance of \$25,000, alleged to be due to him.

Let us now look at other business transactions of Mr. Boott, which, though not known to me at the time of my former pamphlet, are now proved by unquestionable evidence.

The trust fund, formed in 1818, appears to have been first broken in upon by sales, in July and August, 1819, of \$21,000 of the U. S. six per cent. stock of the loan of 1813, standing in Mr. Boott’s name as executor, to divers parties, having no connexion with this case. [Ante, p. 269.] The sale of the residue of the six per cent. stocks, as before stated, I have been unable to find; but, according to the account of 1844, the sale of the whole of the six per cent. stock was at a loss, compared with its cost, of \$679 37. [See accounts, L. p. 38, B. App p. 14.]

In 1820, March 1, as appears by the records of the Boston Manufacturing Company, Mr. J. Wright Boott, the senior partner of the house of Kirk Boott & Sons, No. 2, subscribed for thirty shares of a new issue of stock in that company, the certificates of which were taken out in his own indi-

vidual name. The subscription price to new associates was \$1150 per share, as I formerly stated, [B. p. 118.] and so Mr. Lowell tacitly admits. The amount paid, of course, was \$34,500. Of these thirty shares the "Reply" informs us, [L. p. 69.] that twelve were intended to represent an investment for Mrs. F. Boott and for her children; and, in respect to the children, it, in fact, appears, by the probate accounts of Mr. J. Wright Boott as their guardian, that eight shares of that stock went into those accounts, two for each ward. The remaining eighteen shares were intended, we are told, to represent an investment for the account of Mrs. Boott's annuity fund; or, at least, that the dividends upon them were treated as Mrs. Boott's in the books of Boott & Lowell, as appears by an entry, purporting to be extracted from those books, under date of April 1, 1822. [L. p. 69.] These shares are charged among the property on hand, in the account of 1844, at the subscription price, amounting to \$20,700. [L. p. 38. B. App. p. 43.] This investment, if intended at the time as a specific investment for the annuity fund, would about take the place, in March, 1820, of the \$21,000 of U. S. six per cent. loan of 1813, sold about eight months before, with this difference only, besides loss of interest, namely, that the U. S. stock stood in Mr. Boott's name as *executor*; whereas the Boston stock stood in his *private name*, with nothing to mark it as trust property. If the residue of the six per cent. stock was sold at or near the same time, there remained about \$22,000 still in hand, for which no distinct investment appears, either as *executor*, or in Mr. Boott's private name. These transactions occurred during the existence of Kirk Boott & Sons, No. 2.

In the fall of 1821, Mr. J. Wright Boott, in connexion with Mr. Kirk Boott, joined Mr. Nathan Appleton, and the late Mr. P. T. Jackson, in a speculation, which resulted in the purchase of all the shares in the Patucket Canal, and a large quantity of lands at Chelmsford, whereby the control of the water-power of the Merrimack river was obtained, for the purpose of manufacturing and printing cotton cloth, at the place now called Lowell. For the history of that matter,

I may refer to a recent published correspondence between Mr. Nathan Appleton and Mr. John A. Lowell. According to that correspondence, the agreement of the four associates was, to form a company for this purpose, the stock to be divided into six hundred shares of \$1000 each. The two Messrs. Boott subscribed for ninety shares each ; Messrs. Appleton and Jackson for one hundred and eighty each ; and Mr. Paul Moody was allowed to subscribe for the remaining sixty. Afterwards, new associates were admitted, who took shares, relinquished to them, proportionally, by the first subscribers. An exact proportion would have reduced Mr. J. Wright Boott's shares from ninety to fifty-eight. It would seem, however, that he relinquished two more than his exact proportion to somebody ; since, upon the organization of the Merrimack Manufacturing Company, (which was the corporate name taken soon after by this private association,) Mr. J. Wright Boott appears to have been an original subscriber for fifty-six shares only of the corporate stock. This transaction, however, runs into the year 1822, the first assessment on the corporate stock having been payable on the first of April of that year. The transaction of 1821, though a large enterprise, which has led, eventually, to the investment of millions of dollars at Lowell, does not appear to have taken, in the outset, a very great sum of money from the associates, to effect the first purchases. The whole amount paid in by the associates, prior to their transfer to the corporation, appears, by the correspondence above referred to, to have been short of \$68,000. Of this, the Messrs. Boott, if they contributed their full original proportion, would have paid, jointly, about \$20,000. But this was, doubtless, reduced by the contributions of the new associates, who were afterwards admitted ; and, upon forty of the shares, parted with by the Messrs. Boott, a profit seems to have been realized of \$4000. The moderate sum, thus paid by the unincorporated associates, must have been, afterwards, allowed to them by the corporation, towards their assessments on the corporate shares they took, or must have been repaid to them in some other form, upon the transfer of the property to the corporation.

This Chelmsford speculation occurred during the last year of the house of Kirk Boott & Sons, No. 2 ; but, as we see, did not call, at that time, for much money.

In the same year, 1821, it appears from Mr. Boott's guardianship accounts, that he sold out all the United States stocks, which he held as an investment for his four wards, to the amount, in all, of about \$47,000. [Ante, p. 237.] This reimbursed him for an advance of the preceding year, caused by the purchase of eight shares in the Boston Manufacturing Company for their account, and left him, at the end of the year, with cash of theirs in hand, to the amount, without interest, of about \$45,500. [Ante, p. 237.] This sum does not appear to have been re-invested, to any great extent, on those accounts, for many years ; and the debt was constantly increasing by interest upon it, as has been before shown, until the marriage of one of his wards in 1826, when there was a partial payment to that ward. Neither has any investment by Mr. Boott, as executor, or any purchase in his own name, in the year 1821, or the early part of 1822, come to light, which could have taken up any considerable part of the fund thus borrowed from the estate of his wards. If the sum borrowed did not go into his mercantile business, it stands wholly unaccounted for.

At what precise period of the year 1821 this large sale of United States stocks was effected cannot be ascertained from the probate accounts ; but, with the year 1821, the house of Kirk Boott & Sons, No. 2, came to an end ; and, on the first of January, 1822, the house of Boott & Lowell began ; and we learn from the " Reply " that Mr. Boott furnished to that house a capital of \$40,000. [L. p. 58.]

In March, 1822, we learn, also, from the " Reply," that Mr. Boott purchased, in his own name, six shares of the Boston Manufacturing Company, from Dr. Jackson, at \$1500 a share ; for whose account, if not his own, does not appear. He held them till October, 1824. [L. p. 70. B. App. p. 32.]

The first assessment on the fifty-six shares of stock in the Merrimack Manufacturing Company became due in April, 1822 ; [B. App. 30.] but the payment of that assessment is,

to some extent at least, perhaps fully, accounted for by what was due to the Messrs. Boott for the advances, above mentioned, on account of the company before its incorporation,—going upon the presumption that they contributed their fair share to the unincorporated association. In the latter part of that year, (1822,) Mr. J. Wright Boott went abroad, taking his brother William to Europe. There, it seems from the "Reply," he travelled about a year. [L. p. 61.] The "Reply" further informs us, that, although, during his absence, "nearly every thing relating to the pecuniary concerns of the family devolved upon" Mr. Lowell, [L. p. 28.] yet, that Mr. Kirk Boott took care of the assessments falling due on the manufacturing stock at Lowell. [L. p. 88.] Out of what funds did Mr. Kirk Boott pay these assessments, both for himself and his brother? Did they not come from Mr. J. Wright Boott? And, if so, were they not, all, in truth, funds of the estate? At any rate, Mr. J. Wright Boott must, at some time, have repaid to Mr. Kirk Boott the assessments on his own shares; and their full amount, when paid, must have taken up \$56,000.

Shortly before Mr. J. Wright Boott went abroad, we have seen that he transferred to Boott & Lowell the United States seven per cent. stocks, which he held, duly invested as executor, for the trust funds of his father's will, to the amount, at par, of \$31,111 11; and also the Suffolk Bank shares, which appear, by the probate accounts of 1818 and 1844, to have been held by him on the same trust account, to the amount, at par, of \$20,000. [Ante, pp. 268, 271.]

What did Boott & Lowell with those stocks, during Mr. Boott's absence in Europe? The transfer books of the United States stocks, now deposited at the Merchants' Bank in Boston, furnish the following account of the seven per cents. :—

"BOOTT & LOWELL OF BOSTON.

1822.		PURCHASES.			
Feb'y 22		From T. Barteile, Guard'n,		\$4,000	
" 28		" Jno. Hooper,		4,000	
March 9		" Sundry Accounts,		6,400	
April 25		" Jonathan Porter,		4,000	
Oct. 1		" Jno. W. Boott, Executor,			\$18,400 00
					31,111 11
					<u><u>\$49,511 11</u></u>
1822		SALES.			
July 15		To George Evelyn,	-	\$14,400	
Nov. 2		" Bass & Heywood,	-	4,000	18,400 00
" 18		" Trustees of the Greene Foundation	-	.517	
" 20		" Stephen Williams	-	1,000	
" 28		" H. Andrews & S. A. Eliot, Trustees,	-	7,000	
Dec. 13		" Edmund Baylies,	-	2,500	
" 13		" Henry Andrews	-	944	
1823					
Jan. 6		" D. Messinger & J. Simonds	-	1,380	
" 6		" Trustees of Greene Foundation,		615	
" 11		" Thomas Lamb,	-	3,000	
" 11		" Boston Female Asylum,		1,000	
" 18		" Rebecca Peck,		3,000	
" 23		" Ezek'l Kendall, Jr.	-	700	
" 29		" Sundry Accounts,	-	550	
Feb. 3		" Eliot & Andrews,	-	4,000	
" 3		" Thomas Minns,	-	360	
" 7		" Susannah Conway,	-	5,000	
" 20		" Mary Hall,		300	
Mar. 14		" Henry Andrews,	-	95	
					<u><u>31,111 11</u></u>
					<u><u>\$49,511 11</u></u>

I certify that the above is an accurate copy from the United States Loan Books, kept at the Merchants' Bank, Boston.

HENRY F. FLAGG, Acc't."

It will be understood, of course, that the first \$18,400, in the foregoing account, has nothing to do with this case; at least, I am not aware that it has. The \$31,111 11, which came from "J. W. Boott, executor," appear to have been transferred by Boott & Lowell, from time to time, in small parcels, to different parties, between November 18, 1822, and March 14, 1823. All I know, further, about this parcel of stocks, is, that the probate account of 1844, though it makes no mention of Boott & Lowell as in any way connected with the transaction, and omits to specify the date of the transaction, shows these stocks to have been sold for the estate, by entering, under the head of "Gain on sale of

stocks," a certain amount of gain on a sale of the shares in the Suffolk Insurance Company, and thence deducting *losses* on all the other stocks; and among them is, "*Less loss on sale of U. S. seven cent. stock, \$1,687 08;*" which loss is, thus indirectly, charged to the estate. [L. p. 38.] Whether it was incurred upon a sale by the executor *to* Boott & Lowell, or upon sales made *by* Boott & Lowell as agents for the executor, can not be determined on the face of the transfers, but may be important for the heirs to know, and quite important for Mr. Lowell to explain.

As to the Suffolk Bank shares, the transfer books of that bank show, as I have ascertained by personal inspection, that those shares, also, passed into the hands of Boott & Lowell, October 2, 1822, and were transferred by Boott & Lowell to the Mercantile Marine Insurance Company, May 6, 1823; and, by the probate account of 1844, it appears, that they were sold at a loss of \$100; which loss is charged to the estate, in a form similar to that above given in the case of the U. S. seven per cents. [L. p. 38.]

The proceeds of these sales of the seven per cents. and of the bank shares, thus appear to have passed into the hands of Boott & Lowell; and, if we may judge by these records, they appear, by comparing the cost of the stocks, according to the probate account of 1818, and the losses upon the sales of the same stocks, according to the account of 1844, to have produced \$52,853 43.* Whether the U. S. six per cents. not accounted for by those of the U. S. loan books, which I have, as yet, been able to find,—amounting, at cost, according to the probate account of 1818, to about \$22,690,—also passed into the hands of Boott & Lowell, Mr. Lowell

* U. S. seven per cent. stock,	\$31,111 11
Premium on do	3,029 40
200 Suffolk Bank shares,	20,000 00
Premium on do	500 00
Cost, by the account of 1818, [B. App. p. 14,]	\$54,640 51
Loss, on sale of U. S. seven per cent. stock, by the account of 1844, [L. p. 38. B. App. p. 43.]	\$1,687 08
Do. on sale of Suffolk Bank shares, by same,	100 00
	\$1,787 08
	\$52,853 43

will be able to tell us. He will also be able to tell us, what Boott & Lowell did with the money proceeding from any of these stocks, the last of which appear to have passed out of their hands, in May, 1823.

In January, 1824, it appears by the transfer books of the Merrimack Manufacturing Company, that Mr. Boott became a subscriber for forty shares of the new stock, then created by that company ; which, when paid for, must have taken up \$40,000. [B. App. p. 30.] He was then the holder of \$96,000 in this stock.

In the course of that year, it appears, by the same transfer books, that he sold sixteen of his Merrimack shares; (leaving forty of the old stock, and forty of the new,) and in 1825, he transferred four to Mrs. Mary Lee. After this, there appear no transfers from him, (except as collateral security for loans, and a transfer of three shares to Mr. William Lyman, which were afterwards restored,) until the transfers made in 1831, on his guardianship accounts, and to me in trust, as before explained. [Ante, p. 293.]

In the course of the same year, (1824,) he appears to have sold the six shares of Boston Manufacturing Company, bought from Dr. Jackson, at their cost, as Mr. Lowell states ; [L. p. 71.] and, also, six other shares of the same stock, as the transfer book of the company shows, [B. App. 32.] besides transferring two shares to Mrs. Mary Lee. No other transfers of this stock appear afterwards, (except as collateral security, and a transfer and retransfer to and from Mr. William Lyman,) until the transfers, in 1831, of four shares to his guardianship accounts, and of fourteen to me under my trust agreement.

In April, 1824, he also sold the shares of Suffolk Insurance Company, which he held as executor, according to Mr. Hayward's certificate, [Ante, p. 268.] and realized from them, as appears by their cost in the probate account of 1818, and the gain upon their sale entered in the probate account of 1844, \$20,357 50,*

* Cost, by the account of 1818, [B. App. p. 14.]
Gain, by the account of 1844, [L. p. 38.]

\$17,753 44
2,604 06
<hr/>
\$20,357 50

In the same year, (1824,) he bought, from the late William Dehon, an estate in Bulfinch Place, which he, immediately, re-sold, reserving the stable, at a cost upon the whole transaction, according to the account of 1844, of \$2500. [L. p. 39.]

In July, of the same year, the house of Boott & Lowell, we are told, was dissolved ; [L. p. 28.] and,—whether at the winding up of their affairs, or at what other time, we are not told, but, at some time, we are told, by the account of 1844,—Boott & Lowell paid over to Mr. Boott, as executor, a sum of \$69,389 99, “in liquidation of the outstanding property of Kirk Boott & Sons.” [L. p. 38.] This is charged, in the account, as so much property of the estate additional to the \$116,783 95, which, in 1818, had been “invested in stocks to constitute the trust fund,” [L. p. 38.] but of which a great part was, afterwards, transferred, as we have seen, to Boott & Lowell ; [Ante, p. 271.] and the amount, so transferred, is not specifically accounted for, in the probate account of 1844, otherwise than by charging upon the estate, in the form above shown, the loss experienced in the sale of the stocks. [Ante, p. 527.]

As holder of eighty shares of Merrimack stock, Mr. Boott became entitled to eighty shares of the Locks and Canals Corporation, when that company was formed out of the Merrimack Company, which, I think, happened in this same year, 1824. He subscribed for, and took, the whole eighty shares in his own name, and afterwards disposed of them, as appears by the following letter :—

LETTER FROM MR. J. T. MORSE.

BOSTON, FEBRUARY 13, 1849.

DEAR SIR,

I find by the leger of the Proprietors of Locks and Canals, that Mr. J. W. Boott took, originally, eighty shares in the stock of that company, which he disposed of to different parties in the years 1825, 1826, and 1828 ; and that the late Mr. Kirk Boott took, originally, in the same company, ten shares, five of which were disposed of by himself, and five transferred by his executor to the trustees, after his death.

The book, containing the recorded copies of the transfer deeds, is

not in my keeping, and I cannot therefore give the particulars of each transfer.

Respectfully yours,

J. T. MORSE.

To Edward Brooks, Esq., }
Court Street. }

I find no other transactions in stocks till February, or March, 1826, when Mr. Boott brought his late partners to a settlement. By that settlement, he received, as before shown, [Ante, Ch. 51.] twenty-one shares of Boston Manufacturing Company, from Mr. Kirk Boott, at \$1300 a share, which, amounting to \$27,300, are charged to the estate at that price in the account of 1844. He received, also, from Mr. James Boott, about the same time, five shares of Merrimack stock, which Mr. Lowell admits to have been transferred in settlement of the partnership accounts. [L. p. 51.] He received, also, from the same gentleman, about the same time, ten shares in the Locks and Canals. This I was not aware of at the time of the writing of my former pamphlet; and Mr. Lowell takes care, as the fact makes against him, not to notice my omission. This was, no doubt, a part of the same settlement. I find, also, a transfer from Mr. William Wells to Mr. J. Wright Boott, about the same time, of six shares in the Locks and Canals, which I take to have been the refunding of some advance made to him beyond his wife's share of the estate. The shares in the Locks and Canals, acquired in these settlements, together with the balance of Mr. Boott's own subscription, were all disposed of in 1828, as I find from the books of the company, with the exception of six, which he held till 1831, and then transferred to his guardianship accounts; and the eighty-five shares of Merrimack became reduced by transfers to Mrs. Lee, and to his guardianship accounts, and by a sale of two shares in 1837, to seventy-one shares, which appear in the account of 1844. [B. App. pp. 30, 31.]

In this same year, (1826,) he entered into the business of the foundry, upon which he had expended, before September, 1830, as we see by his memorandum, \$70,000. [Ante, p. 198.]

This brings us up to the period, at which I took up my

narrative with the state of affairs then existing, as shown by that memorandum, and by Mr. Lowell's admissions of the truth of its contents. [Ante, Ch. 21.] And it will be noted, that the greatest number, and by far the most important, of Mr. Boott's stock transactions, occurred during the existence of the house of Boott & Lowell ; although nothing in the account of 1844, or in the explanations of the "Reply," would lead to that supposition.

CHAPTER LII.

THE ISSUES RESPECTING LOSSES OF PROPERTY, IN TRADE, AND OTHERWISE. A GREAT LOSS, TO SOMEBODY, SHOWN FROM THE REPLY.

My next step will be, to show, from my former pamphlet, and from the "Reply," what Mr. Lowell was called upon to answer respecting supposed losses of property, and how he answers it.

I stated that "the great question of the account is, whether it truly represents the whole capital of the estate, and the amount which had been distributed, so as to make out the supposed indebtedness of the estate to Mr. Wright Boott." [B. p. 108.] I added my belief, "that much *more* than \$90,000 was distributed, or at least permitted to go to the use of the heirs; but not with any equality." [B. p. 109.] And to avoid, as I stated, invidious comments on supposed over-payments to others, I pointed to my own case, only, as one, in which the furnishing of Mrs. Brooks's house should have been charged, in addition to the \$10,000 paid to me, unless that expenditure was supposed to be included in the \$275,000 paid "to, or for account and by order of, the widow." [B. p. 109.]

If \$90,000, paid to the heirs, might be assumed to be correct, as an average result, I inquired "whether it can be true, that Mr. Wright Boott was justly accountable, as executor, for no more than \$186,000 of moneyed capital?" One thing, I said, is certain :—

"Either Mr. Wright Boott made a gross misrepresentation, without any conceivable motive, when he stated to me, in 1821, and to Mr. William Boott, in 1827—8, and I believe to other heirs at other times, that the shares, presently distributable, were \$20,000 apiece, or else, the account, prepared by Mr. Lowell, does not truly exhibit the full amount of capital, for which the executor was chargeable. The \$20,000 apiece would have amounted to \$180,000, besides the \$111,000 of trust funds for his mother and aunts ;—in all, upwards of \$290,000, instead of \$186,000, which the account shows. What Mr. Boott, senior, really left, I do not pretend to know. Mr. Lowell, to some extent, may have better means of knowledge. The books of Boott & Lowell are, no doubt, in his possession ; and from them, I presume, he arrives at the precise sum of \$69,389 99, as cash received by the executor from that firm, "in liquidation of the outstanding property of Kirk Boott & Sons." But we want to know, whether this is a mere computation of Mr. Lowell's, and if so, upon what data, or whether it is the balance of an account in the books of Boott & Lowell, as would seem most likely, and if so, what were the items, which had previously gone into that account, and through what period it extended, before we can determine whether it truly represents all the property of the estate, which came to Mr. Wright Boott, even *after* the business of liquidation had passed into the hands of Boott & Lowell. We want farther to know, when it was paid, in what sums, and how it was invested, to determine the extent of his just accountability, even for the items of that particular sum. We are still more in the dark as to what had come to his hands *before* the firm of Boott & Lowell began. Mr. Lowell, apparently, does not go back to the books of Kirk Boott & Sons, or, at least, does not rely upon them for information on that head. He refers only to the former probate account, settled in 1818, and takes its foot as the whole residue of property, (besides the items of the inventory,) received by Mr. Wright Boott, before the payment to him by Boott & Lowell. As evidence of receipt, to the extent supposed by the present account, this has been shown to be defective by the sum of \$10,000. But was there, in truth, nothing, which came to the hands of Mr. Wright Boott, or for which he had become accountable to the estate, *in the interval* between the settling of his account, May 11, 1818, and the *formation* of the firm of Boott & Lowell, in 1822? Had nothing of his father's come to his hands *before* May 11, 1818, except *cash*, as stated in that account, and the chattels described in the inventory?

"The books of Kirk Boott & Sons, I presume, would throw light on that question ; but, those I have never seen, and do not know in whose custody they are. They would seem to be, most properly

now, in the hands of Mr. John A. Lowell, as executor of Mr. Wright Boott. They ought, certainly, to have been in Mr. Wright Boott's own possession at the time of the making of this account, and should have been open to the inspection of Mr. Lowell. But, since nothing appears to be drawn from *them* in the account stated, we may, perhaps, fairly infer, that they were not looked at for the purpose; for it seems impossible, that literally *nothing* should have been collected on account of the old firm, from May 11, 1818, when the probate account was settled, to Jan. 1, 1822, when the firm of Boott & Lowell was begun, (an interval of nearly four years,) and yet that, *after those four years had passed*, near \$70,000 of the estate's money should have been collected by that firm, and paid over to the executor. Yet such is virtually the statement of the present account." [B. pp. 109, 110.]

On the notices of dissolution of old firms and formation of new ones, I remarked:—

"Now, it may be material to note, that the estate had legally the interest of a partner in the *first* concern, and *not* in the second; and that Mr. Wright Boott was the *sole* liquidator of the first concern, and Boott & Lowell were liquidators *only* of the *second* concern. It is difficult to see, therefore, how Boott & Lowell should have had occasion to settle any account with Mr. Wright Boott *as executor*, or to pay him any moneys in that capacity. Their settlement must have been with Kirk Boott & Sons, the *second* concern, whose affairs they were appointed to liquidate; and, consequently, it could not have involved moneys of the estate, except such as Mr. Wright Boott may have permitted, improperly, to be employed in the trade of Boott & Lowell, or such balance of the estate's money as may have been passed to that concern by Kirk Boott & Sons, the second, if Mr. Wright Boott had improperly invested moneys of the estate in that. His plain duty, as executor and surviving partner, was to have wound up fully the business of the old concern, in which his father was a partner, as soon as the business would permit. The rights of all persons interested in it, through the estate of the deceased partner, became fixed, March 19, 1818. No *new trade* was to be carried on, after that date, on their account, nor at their risk, with one exception. The will, contemplating the probability of a new partnership by some of the testator's sons, authorized the executor to make, in that case, a specific loan, at interest, to such new house, of the shares of his then minor children, until they should come of age. That, upon the theory of the present account, would have amounted to a loan of \$30,000, and no more. Nothing belonging to the *estate*, as an undivided property, could, rightfully, have been placed in the second concern; its partners may have placed their own shares there, and doubtless did; the ascertained shares of the minor children might, also, have been placed there by way of loan to them, though the present account neither states, nor suggests, any such specific investment; but, whatever collections the second firm may have made, on account of Mr.

Wright Boott as liquidator of the first concern, these, I presume, must be considered as having come to his hands at once, in his capacity of executor, the moment they were collected, he being himself one of the collecting agents. Such moneys should have been immediately distributed among the parties entitled, and not continued in trade, except so far as specific loans went, authorized by the will. But, I apprehend, it will be found, if the truth can ever be got at, that Mr. Wright Boott made no such distinctions,—but suffered the capital and outstanding transactions of the first house, in which the estate was a partner, to be indiscriminately mingled with the funds and business of the second house, in which the estate could not rightfully be a partner, and, which, it appears by Mr. Kirk Boott's letter of February 8, 1826, [App. No. 7.] must have been a very disastrous one; since his own share of the loss in it, not only used up all his own present share of his father's estate, but brought him into a very heavy debt beyond that. Now it was only the diminished outstandings of this second ruinous concern, which could have been the subject of a settlement by Boott & Lowell, and of a payment by them to Mr. Wright Boott, at some time, of near \$70,000, 'in liquidation of the outstanding property of Kirk Boott & Sons,'—for that is the *name* of the second concern, as well as of the first. And the interest of the executor in such a payment, if it was made to him *as executor*, which is the fact asserted by the present account, is no evidence that the second concern had not received, used, and lost, a much larger portion of the original estate, before the firm of Boott & Lowell came into existence. Whatever they had so received Mr. Wright Boott was chargeable for as executor, and not for the mere leavings, which may have been collected by Boott & Lowell.

"The only important items of debit in this account, namely, the amount of cash, which had been specifically invested before May 11, 1818, and the amount of cash stated to have been paid over to the executor by Boott & Lowell at some time after January 1, 1822, coupled with the total omission of any intermediate receipt by the executor, are facts, which I am unable to reconcile with other known facts upon any hypothesis, except that of great loss to the estate, unwarantly incurred by the executor, in this second concern, for which he well knew himself to be personally liable, and which he originally intended to make good, and probably would have made good if he had been successful in all his subsequent speculations. How else can we account for his representations at all times, when he made any, that each heir was entitled to a dividend of \$20,000 from the estate? How else, for his feeling *the necessity of a release from the heirs in 1833*, and particularly from some of them, to whom he had in fact, already paid \$10,000, or more, which, according to Mr. Lowell's account, *exceeded* all he owed them? How else, for the fact stated to me by the late Mr. Pratt, that Mr. Boott, senior, at the dissolution of the firm of Boott & Pratt, was a richer man than himself, and was afterwards engaged in trade successfully? And what an illustration have we of the difference between a well managed and an ill managed property, in comparing the results, at the present day, of the estates of those two gentlemen, both of which were, or should

have been, out of the hazards of trade at dates not far apart! Besides which, direct proof appears of heavy loss, sustained by the house which the sons established, in the letter of one of the partners (Mr. Kirk Boott,) above referred to. The extent of it we are left to gather from inference. [B. pp. 111 to 113.]

I then stated the evidence, known to me at that time, respecting the settlement between Mr. Kirk Boott and Mr. J. Wright Boott, in 1826, leading to the inquiry, how much of that large sum, apparently accounted for by Mr. Kirk Boott, was for his share of loss by the firm, and how much for over-drafts or advances made to him. I referred, also, to the contemporaneous transfer of stock by Mr. James Boott, as evidence of some settlement made with him, but doubted whether there had been a complete repayment of his share of the loss. I expressed the opinion that Mr. J. Wright Boott, himself, instead of being worth some \$50,000 or more, as he was commonly reputed when I first knew him, was really worth nothing, after the winding up of the affairs of Kirk Boott & Sons, No. 2; but, on the contrary, was indebted to his father's estate for moneys improperly used in that concern, or permitted to be drawn out of it; and that, although he intended, at the time of the letter of Mr. Kirk Boott of February, 1826, soon to settle the estate, and pay over the balances, he was, unfortunately, induced, about that time, to enter into the speculation of the iron foundry, which called for large sums of money, and turned out so disastrously as to defeat all his calculations. My conclusion was:—

“Without pretending, therefore, to have any knowledge on this subject, except of the facts, or rather of the evidence, above stated, I am obliged to infer from this evidence, until I see something to the contrary, that the collections made by Kirk Boott & Sons, *second concern*, during the four years of their existence, before the firm of Boott & Lowell began, on account of the business and outstanding property of Kirk Boott & Sons, *first concern*, nearly the whole of which belonged to the estate of Mr. Boott, senior, were sufficient to cover the subsequent great losses which seem to be plainly indicated; and that the account exhibited by Mr. Lowell, looking at it as a statement of results purporting to run back to the time of the testator's death, is essentially defective in the omission of these collections, which, if inserted, would show, I imagine, a large balance

against Mr. Wright Boott, even after allowing him the whole benefit of the fictitious credit of near \$275,000 for "income paid to, or for account and by order of, the widow." [B. pp. 115, 116.]

These views were, of course, to a great degree conjectural, and were put forth as such. On revising them, however, in connexion with Mr. Lowell's "Reply," and the additional facts, which I have since learned, I see nothing, very essential in this controversy, to alter. But, it may be proper for me to suggest, that my unwillingness to bring into this case the probable receipts of particular heirs, further than the case absolutely required, may have left my statement so incomplete as to have given an impression, upon the whole, that I supposed a much larger amount of *mere mercantile loss* by Kirk Boott & Sons, No. 2, than is likely to have happened. Mr. Lowell, at any rate, chooses so to view my remarks ; and his answer makes it necessary for me, now, to correct the impression, if I gave it, of any such enormous magnitude of loss, in regular trade, as he wishes his readers to believe that my theory requires. I have already alluded to this subject, but, for the purpose of a correction, I ought, perhaps, to show, more particularly, how, and where, I suppose the money to have gone.

My idea, stated more in detail than formerly, is, that the estate of Mr. Boott, senior, was, as Mr. J. Wright Boott represented it, large enough to give a dividend of \$20,000, or thereabouts, besides reversionary interests in the trust funds and in the real estate, to each of the heirs ; and that most of them actually got that amount of dividend, in some shape or other, and sooner or later ;—that Mr. J. Wright Boott over-advanced, beyond that, largely, in some quarters,—he certainly did to his brother Kirk,—and that he supplied, for many years, to the family generally, a larger expenditure than the estate, in its unsettled condition, strictly warranted ;—that he had very little property of his own, at the time of his father's death, except what came to him as an heir or devisee ;—that the losses of Kirk Boott & Sons, No. 2, and his over-advances to some of the heirs, took away, for the time, considerably more than all he was individually worth ;—

that the funds of the estate, and his guardianship funds, were employed, indiscriminately with his own, in conducting the mercantile business, in which he was engaged;—that funds, from both these sources, passed into the business, first of Kirk Boott & Sons, No. 2, and afterwards of Boott & Lowell ;—that further loss was encountered in the business of this last named house;—that these losses fell, in the first instance, on his various trust funds,—his own property being insufficient, as before suggested, to meet his own share, and cover the amount he had advanced for others, beyond their just dividends from the estate;—that these advances he afterwards got back, fully, from Mr. Kirk Boott, from Mr. James Boott probably not, perhaps not from others;—that he made very little for himself, for reasons that will appear, out of his Chelmsford speculation, though his brother Kirk left a moderate property, resulting entirely from that speculation, notwithstanding his large previous losses and debts first to be paid out of it;—that all, which Mr. J. Wright Boott got back from his advances for others beyond their just dividends, and a great deal more, which belonged to his father's estate, went into the business of the foundry and was mostly sunk there; sunk, at least, as a present property, available for the payment of debts, and for the making good of trust funds;—and that, finally, since his guardianship accounts were eventually made good, the balance of all these losses, beyond the amount of his individual property, (losses arising not only from capital directly sunk, but from a terrible interest account, which was constantly eating him up,) fell, by necessity, upon his father's estate, and upon the income derived from its trust funds; and that the amount of this loss incapacitated him from paying to any heir, after 1830, more than he had already paid, except to Lyman & Ralston, who were paid by a relinquishment to them of his interest in the foundry, so far as that was payment. So that, if the account were corrected according to my theory, and in accordance with the particular facts discovered since my former pamphlet, it would not only show a use of the funds in Mr. Boott's hands as executor, very different from any thing that now

appears in the account, but would also show the receipt of about \$100,000 more of capital than he is charged with, and payment to some of the heirs of about \$70,000 more than he is credited with ; and a large balance finally resulting against him, instead of an apparent balance in his favour.

This mismanagement, and its consequences, I attribute, mainly, as I formerly did, to principles of action, essentially mistaken for a person in Mr. Boott's position ; to principles of generosity, without justice ; to neglect of accounts, and singular disregard of the ordinary duties of a trustee ; and to a species of mental obliquity, which ended in insanity, particularly affecting, before that development, his notions of his rights over the family property. From these causes he early placed himself, as I conceive, in a false position, from which he was never able to recover ; and which entirely accounts, to my mind, for his unwillingness to disclose, at any time, more than he did disclose, concerning the family property, and for his tacit refusal, notwithstanding the urgency of his brother Kirk and of Mr. Jackson, to settle any accounts, until circumstances, at last, compelled his reluctant acquiescence in the account prepared for him by Mr. Lowell ; and that account, I think, he would never have adopted but for the hallucinations, under which he then laboured.

Now let us see what Mr. Lowell has to say to this theory of mine, so far as it was formerly disclosed.

He meets it by an opposite theory ; which is, that Mr. Boott, senior, probably left at his death only about \$280,000, all told, which, after deducting the specific bequests and devises, would give to the heirs about \$15,000 each, besides their reversionary interests in the trust funds and the mansion-house ; [L. pp. 25, 26.] that Mr. J. Wright Boott was, at the same time, worth about \$70,000, *besides* what his father left him ; [L. p 26.] that heavy losses were sustained by the *estate*, from particular causes, which he mentions, in the winding up of the business of the first house,—in which the estate had the interest of a partner,—and that the present divisible property of the heirs was thereby reduced below \$10,000 each ; [L. p. 27.] that in the second house, formed by the sons, instead

of loss, there was actually a profit ; [L. p. 51.] that some considerable loss was sustained, afterwards, by Mr. J. Wright Boott, in the business of the foundry, but not more than his private property was abundantly sufficient to bear ; [L. p. 202.] that there was no loss, any where, of funds of the *estate*, except losses, without fault of the executor, in the winding up of the partnership business ; and that, by paying \$10,000 to each of the heirs, as the account claims, the executor, in fact, *over-paid* them by a few thousand dollars, and this over-payment he preferred not to ask to have returned, [L. pp. 27, 58.] though he owed a large sum to Mr. Lowell, to which it might have been very conveniently applied ; that the debt to Mr. Lowell, at the time of the settlement of the account, was over-balanced by the cash balance, due from the estate to the executor, arising out of this over-payment to the heirs, added to more than \$20,000 of his private property, which had become mingled with that of the *estate*,* in consequence of my agreement with Mr. Lowell in May, 1831 ; [L. p. 41.] and that, after paying the debt to Mr. Lowell out of this balance, and providing, fully, for his mother's trust fund, [L. pp. 45, 109, 195.] Mr. Boott remained the owner of one third of the reversions of the trust fund and the mansion-house, which, when they fall in, will amount to \$48,000. [L. p. 110.]

The latter part of this theory,—concerning the debt to Mr. Lowell, and the supposed private property of Mr. Boott, that was intended to pay it, and the effect of Mr. Lowell's agreement with me,—has been already disposed of, upon a view, which admitted, for the sake of the argument, that Mr. Boott had nothing of original capital, belonging to the *estate*, to account for, beyond that, which he is charged with by the account of 1844. It remains only to see, as to the residue of our respective theories, which of them is found to agree best with known facts.

* Mr. Lowell does not seem to have very clear ideas as to the *amount* of this private interest. When he is accounting for the use made by Mr. Boott of the income from the manufacturing stocks, he says it was \$20,000; or one sixth of the alleged cost of the stocks. [L. p. 92.] When he is treating another point, he says it was *at least* \$25,000. [L. pp. 41, 88.]

The first remark, that suggests itself, is, that a great loss, by some means, and of somebody's property, is plain on Mr. Lowell's own showing. He tells us, that the estate, left by Mr. Boott, senior, was, *at first*, estimated at \$280,000. [L. p. 25.] The account of 1844 shows only \$186,000, besides the specific items in the inventory, appraised at near \$37,000. [L. pp. 38, 39.] The estate fell off, then, from the first estimate, according to the "Reply," by not far from \$60,000; of which Mr. Lowell, since he asserts the fact, as founded on his personal observation, is bound to give some reasonable explanation.

We are next told, respecting Mr. J. Wright Boott, that, at his father's death, he was possessed of \$70,000 of his own earning, [L. pp. 25, 26.] a store, devised to him by his father, which Mr. Lowell rates at \$16,000, [L. p. 58.] and one ninth of the divisible property of the estate, rated, after all deductions made, at about \$10,000. That is, the "Reply" claims for him, early in life, a property, in present possession, of about \$96,000; and, if my view of a share of the divisible estate shall be found correct, his present property, (taking the statements of the "Reply" in other respects to be true,) would have been \$106,000. All this was independent of his one ninth of the reversions of the mansion-house and of the particular trust funds.

So he began his career, according to Mr. Lowell; but, according to Mr. Lowell, he ends it with nothing, except a reversionary interest in the mansion-house and in the particular trust funds; namely, his own one ninth, and two ninths acquired from his sisters, worth, at the time he acquired them, only about \$7500 each, as we have seen. [Ante, p. 254.] That is, about \$15,000 of nominal property, in addition to his own reversionary ninth, takes the place of the \$96,000, or \$106,000, (according as we reckon a distributive share,) which is said to have been his at his father's death, independently of reversions. If this be so, a loss of property, said to have been Mr. J. Wright Boott's, to the amount of \$80,000, or \$90,000, is to be added to the \$60,000, which is said to have been lost by the estate. In all, a loss of from \$140,000

to \$150,000 is to be rationally accounted for by Mr. Lowell, and accounted for consistently with the hypothesis that Mr. Boott distributed only \$80,000, among the eight other heirs of his father's estate.

We shall presently see how far the statements of the "Reply," concerning the supposed loss of \$60,000 by the estate, without fault of the executor, bear sifting. But how could Mr. J. Wright Boott, upon Mr. Lowell's theory, have lost \$80,000, or \$90,000, of property *not* the estate's? If it was lost in the winding up of the business of the first house, the estate having an interest of three fourths in the partnership, must have lost *thrice* that sum; that is, from \$240,000 to \$270,000, instead of \$60,000, as the "Reply" claims. There was no loss, but a small gain, according to the "Reply," in the mercantile business, in which Mr. J. Wright Boott was engaged with his brothers, after his father's death. [L. p. 51.] No loss is hinted at in the subsequent business of Boott & Lowell. Some loss in the business of the foundry, is admitted, it is true; and in one place, we are told, it was "a *large part* of his private fortune;" [L. p. 202.] but, that it amounted to any thing approaching \$100,000, as I ventured to suggest, or even \$70,000, is treated by Mr. Lowell as quite preposterous. [L. pp. 89, 108-9.] Mr. Boott lived, besides, at very little personal expense; for the cost of the establishment at Bowdoin square, even after his mother had left it, we are assured was not his, but was properly paid out of his mother's income. [L. p. 93.] Where, and how, did this large fortune of his, then, go?

That inquiry naturally leads to another, namely, whether he ever had it. That much more than \$100,000 of property was sunk, under Mr. J. Wright Boott's administration, I deem to be unquestionable. We see that the "Reply," also, admits it. The only material questions, then, are, whose property it was, and whether it was lost by mismanagement as executor, or not. To these I shall next proceed.

CHAPTER LIII.

THE EVIDENCE OF MR. J. WRIGHT BOOTT'S SUPPOSED PRIVATE FORTUNE.

On what is the pretence founded, that Mr. J. Wright Boott was worth, in 1817, \$70,000, acquired in his father's life time, while his father died worth, at most, only \$280,000?—for such are the extravagant assertions of the “Reply.” [L. pp. 25, 26.]

My former remark, concerning Mr. J. Wright Boott's property, was :—

“ So far as I am informed, he had no opportunity of making any thing considerable before he went into partnership with his father. That partnership had existed only two or three years, at the time of his father's death, and by its terms five per cent. was to be paid upon the capital employed, which must have been furnished by his father, before any division of profits, of which his share was to be one fourth. Although he was commonly supposed, therefore, to be worth some \$50,000, or more, when I first knew him, I am inclined to believe, that he was really worth nothing, after the winding up of the affairs of Kirk Boott & Sons, second concern.” [B. p. 114.]

Further information, now, confirms me in that belief. I would state it, however, with this qualification ; that, if, upon a settlement, at that date, of all his affairs, there might have been found any small residue of nominal property, it would have been found to lie, entirely, in claims upon others, then quite uncollectable, for unauthorised advances to them out of the funds of his father's estate, beyond their just share in it. These he would have been bound, on a settlement, to treat as his own private advances. He could not, for his own relief, have charged them, as executor, to the account of the estate.

Mr. Lowell's comment on the passage, above extracted from my pamphlet, is :—

“ If Mr. Brooks had stated nothing, except so far as he was really informed, he would have omitted a large portion of his book. Mr.

Wright Boott came of age in May, 1809, and was probably admitted as a partner in the house on the 1st of February following. At all events, I find in the New England Palladium of September 11, 1810, an advertisement of a large stock of goods recently imported by Kirk Boott & Son. The father died in January, 1817; so that, instead of two or three years, as Mr. Brooks, without qualification, asserts, he had then been a partner of the house about seven years,—in fact during nearly the whole of that period when, according to Mr. Pratt, (p. 113,) Mr. Boott, senior, had been engaged in trade successfully.” [L. p. 107.]

Now Mr. Lowell must be too well informed in the commercial history of his own country at that period, not to know, what no reader, who is old enough, can fail to remember; namely, that it runs into the midst of that disastrous series of public measures, concerning non-importation, non-intercourse, embargo, and war, which began in 1806, and did not terminate till the peace of 1815. These measures totally destroyed, for the time being, the only branch of business, in which the old firm of “Boott & Pratt,” and, afterwards, the more modern firms of “Kirk Boott & Son,” and “Kirk Boott & Sons,” were ever engaged.

Messrs. Boott & Pratt began this business about 1783. During more than twenty years of uninterrupted commercial prosperity, they had amassed, each, a large fortune for that day,—Mr. Boott being, as Mr. Pratt informed me, much the richer of the two. When times of trouble succeeded, they took an early opportunity to wind up, and retire upon their earnings. Mr. J. Wright Boott arrived at manhood, it seems, during this period of commercial stagnation. The measures of our government, for years after, continued to cut off all honest merchants, engaged in British trade, from their employment, and left the door of enterprise open, in that branch of business, to none but irregular traders.

The Messrs. Boott were, neither of them, men, who could be tempted to avail themselves of illicit traffic; nor was it the habit of either of them, in the father’s life time, ever to take extraordinary risks, or to depart from their regular line of business. And it appears from the public acts, to which

I refer,* that, from the time when Mr. J. Wright Boott came of age, according to the "Reply," [L. p. 107.] and, indeed, from a much earlier date, down to the close of the war of 1812, the trade with Great-Britain, was never opened, except for about sixty days in the summer of 1809, under an authority conferred on the President by Congress, and again for a few months after May 1, 1810, when Congress adjourned, leaving intercourse open with both France and England, but subject to be closed against either power, by proclamation, in certain events.

The revocation of the famous Berlin and Milan decrees, without a corresponding revocation of the British orders in council, caused the President to issue a proclamation, November 2, 1810, which had the effect of stopping, once more, all commercial intercourse with Great-Britain on the second of February following; and so it remained, stopped, until the peace of 1815. Yet the whole of these six or seven years, from 1809 to 1815, Mr. Lowell desires the reader to reckon among the years, "when, according to Mr. Pratt, Mr. Boott, senior, had been in trade successfully!" [L. p. 107.]

In respect to the advertisement of September, 1810, found by Mr. Lowell, it indicates, only, that Mr. Boott, senior, was disposed to avail himself of the opening of British trade, in the summer of that year, under circumstances, which seemed to offer a fair promise of its continuance, by entering again into business, for the purpose, probably, of bringing forward his eldest son, whom he then took into partnership. Very

* Non-Importation Act, April 18, 1806.

Embargo, September 22, 1807.

Additional Acts, Feb. 27, March 12, April 22, April 25, 1808, January 9, 1809.

Non-Intercourse Act, with authority to the President to revoke or modify, March 1, 1809.

President's Proclamation, April 19, 1809, to take effect June 10.

" " August 9, 1809.

Additions to the Non-Intercourse Act, June 28, 1809, May 1, 1810.

President's Proclamation, Nov. 2, 1810, to take effect Feb. 2, 1811.

Additional Acts, March 2, 1811, April 4, April 14, 1812.

Declaration of War, June 18, 1812.

Repealing Acts, February 27, and March 3, 1815.

little could have been done, however, in the way of importation and sale, before the trade was, once more, unexpectedly, brought to an end by the President's proclamation.

In this connexion it may be noted, that the will of Mr. Boott, senior, executed November 20, 1813, has no allusion to any mercantile business, as then outstanding or anticipated. On the contrary, it indicates that his property had been withdrawn from trade, and was, mainly, invested in "mortgages, bonds, notes," "shares in incorporated companies," and "stock in public funds;" all of which, as well as real estate, are particularly mentioned. "Accounts, merchandise, and cash," it is true, are included in the general enumeration; but this is no more than might well be expected, in a description intended to cover all remnants of former business, whatever they might be. On the other hand, when we come to the codicil, made December 15, 1815, we find it begins as follows:—

"I, Kirk Boott, taking into consideration that, *since the date of my will*, bearing date November the twentieth, one thousand eight hundred and thirteen, the trade, in which I am engaged in partnership with my son, John Wright Boott, has been *considerably entered into*, and cannot be closed in a short time without great sacrifices being made, it is my will that in the event of my decease, that my said son, John W. Boott, *shall carry it on in the name of the firm, and for and on account of myself and him*, in the same proportion of profit or loss, as it may be, as it has heretofore been done, *until the nineteenth day of March, one thousand eight hundred and eighteen*; that he shall import goods, make sales, receive debts, and make remittances, and do every thing as he shall think conducive to the interest of the trade, in the same manner and form as during my life time; that no division of the property, as devised by my said will of November twentieth, 1813, shall take place *until the nineteenth day of March, 1818*, above mentioned; *that in the interim, between my decease and the said nineteenth of March*, the Executors to my will of November 20th, *may be investing the money*, which I have bequeathed in trust for the support of my wife, Mary Boott, and for my sisters, Elizabeth and Ann Boott." [B. App. pp. 7, 8.]

The same instrument, afterwards, states the terms of the partnership, and speaks of "the concerns of the trade" as having been "settled on the first day of February of each year, since we have been connected together."

The fair inference, perhaps, is, that a partnership was considered to have been nominally subsisting since 1810; and some unsettled accounts, or even unsold merchandise, may, possibly, have remained in 1813; but, it is very certain, that no considerable business was, or could have been, done, after 1810, except to dispose of the importations of that brief period of trade, until the peace of February, 1815, when importation seems to have been vigorously recommenced by Kirk Boott & Sons. Therefore it is that the testator speaks, above, of a trade, which, *since the date of his will, (Nov. 20, 1813,) "has been considerably entered into, and cannot be closed in a short time, without great sacrifices."*

Although I may not have been literally correct, therefore in saying that the *partnership* had, at the time of the death of Mr. Boott, senior, in January, 1817, "*existed* only two or three years," and Mr. Lowell may be, *literally*, correct, when he says it had existed "*about seven years*," the *substantial fact is just as I stated it, and exactly the reverse of that, which Mr. Lowell states.* From February, 1810, to February, 1817, there were *not three years, in the whole*, for British importers to operate in; that is, not three years, in the whole, within which any new importations of British goods could have been made. During the whole residue of the period, the *partnership* may have existed; the *business* did not.

And, now, let us look at the manifest absurdity of Mr. Lowell's hypothesis. Mr. Boott, senior, began that partnership a richer man than Mr. Pratt. So Mr. Pratt said; and nobody, not even Mr. Lowell, questions it. Mr. J. Wright Boott, a youth in his father's counting room, then just of age, began it without a farthing. Mr. Boott, senior, was to receive five per cent. upon his capital, before there were any profits to divide; and of all the profits, beyond the five per cent. interest, three fourths were his, and one fourth only his son's. This appears by the codicil. [B. App. p. 8.] Consequently, if Mr. J. Wright Boott acquired \$70,000, for his share of profits during the partnership, his father must, in the same time, have acquired \$210,000, to add to the large

capital he began with, and to the interest upon it, which was rolling on whether other business was in progress or not, subject only to the expenses of his family establishment, which, at that period, were by no means extravagant. He ought, at that rate, to have died worth more than half a million of dollars. We should thus have, upon Mr. Lowell's hypothesis, much more loss of property to account for, than any body has yet imagined. And, although the business was *successfully* prosecuted, according to Mr. Pratt, who will believe that, by the sales of *less than three years* of importation, the firm of Kirk Boott & Sons, employing no very vast capital, earned a net profit, beyond interest, of \$280,000? Or, if they did, who can believe that Mr. Boott, senior, who had previously been, during more than twenty years of unusual mercantile gains, in successful business with Mr. Pratt, and who, in 1813, owned, as a separate property, all those bonds, notes, mortgages and stocks, which are spoken of in his will, should have left, all together, only \$280,000 of property?

If, during the interrupted term of their brief copartnership, Mr. J. Wright Boott may be supposed to have accumulated some fifteen or twenty thousand dollars, and his father to have added thrice that sum, besides some accumulation of interest, to the handsome fortune he had acquired in connexion with Mr. Pratt, this seems to me quite as much as any reasonable man will think probable, without some better evidence than Mr. Lowell has to offer. For what is his evidence? The reader may be slow to believe it, but the only evidence in the world, referred to in the "Reply," for so material a fact, is Mr. Lowell's own alleged "reminiscences" of what the apprentices and clerks in the counting-room are supposed to have *guessed*, about the comparative wealth of their respective masters. And where, by the way, are these clerks and apprentices? Why have we no statement from any one of them, except Mr. Lowell? How happens it, that nobody is even referred to, for confirmation of his statement on such a point? And, supposing Mr. Lowell and the other

apprentices to have entertained such opinions at the time, what were their means of knowledge?

Mr. Lowell himself, we are told, entered the counting-room in September, 1815, "when under seventeen years of age." [L. p. 23.] He was a boy of about eighteen, then, in January, 1817, when the senior partner died. At that early period of life, he says,—"My position enabled me to *see and know a great deal* about the course of the business of the first firm of Kirk Boott & Sons, of which the father was a copartner." But he is obliged to add, "*The stock, or private partnership, ledger was never exposed to the inspection of the clerks.*" I consequently can not state, positively, the *amount of capital* in the firm, *nor the proportions of it* owned by the partners." [L. p. 25.] Again, he says, "*The partnership accounts* between the father and sons, and afterwards between the brothers, *I never saw; nor do I know how they were kept.*" [L. p. 31.] What, then, does he know about them? Why, we are told:—

"The *generally received opinion, among the clerks*, ordinarily disposed to overrate rather than to undervalue in such cases, was that the property of Mr. Boott, at the time of his death, was about \$280,000; and that of Mr. Wright Boott, who had been a partner of his father for about seven years, was estimated at about \$70,000." [L. p. 25.]

If such was "the generally received opinion among the clerks," it is pretty certain, from what we have just seen of Mr. J. Wright Boott's opportunities for acquiring a fortune, that they must have indulged their disposition of overrating, in his case, to a most unusual extent; and they seem to have thwarted their own natural inclinations, quite as remarkably, in the case of his father.

Since this part of the case, then, rests entirely upon Mr. Lowell's "reminiscence," I think it will be fair for me to place in offset another of *my* reminiscences. While I was a very young man, and before I had become particularly acquainted with the family of Mrs. Boott, I happened, once, to have a conversation with the late Hon. John Lowell, the father of Mr. John A. Lowell, and to hear from him some highly interesting remarks. Circumstances have brought

them vividly to mind. He was speaking, with his usual animation and impressiveness, respecting the constant dispersion of large fortunes in this country, and its political consequences. In the course of his observations, he referred, for an illustration, to the estate of Mr. Boott, senior, who had then recently died, and spoke of it to the effect following : "There was my friend, Mr. Boott, for instance ; he was called a very wealthy man, and yet, you see, he dies, and there are his children left with only \$20,000 apiece to live upon." How Mr. John Lowell got the idea, that the estate gave \$20,000 apiece to the children, is more than I know. If it should happen to have come from *one* of the clerks in the counting-room, it would seem rather inconsistent with the present recollections of Mr. John A. Lowell. Perhaps he will account for it, however, by supposing that Mr. Lowell, senior, *meant* to speak of the children's "*ultimate expectations*," *at the decease of Mrs. Boott!* If so, all I can say to that is, that he did not *say* so, and I did not so understand him. Mr. Lowell, senior, had been on a footing of some intimacy with Mr. Boott, senior, as I always understood ; and placed his son, it seems, in that counting-room. We are told, too, in the "*Reply*," that Mr. J. Wright Boott acted *under his advice*, in returning "*an inventory of the real estate, and of the property specifically devised.*" [L. p. 24.] If so, he had an excellent adviser, and most unexceptionable advice. The advice may have extended, also, to the formation of the trust fund, and to the early settlement of an executor's account to cover it. The proceedings in the settlement of the estate were, so far, perfectly regular. But I do not understand the "*Reply*" to intimate that Mr. Boott was advised, by any body, *not* to settle, within a reasonable time, an account of the *residue* of the estate, and *never* to file in the probate office the slightest evidence of the property, to which *general heirs* were entitled, independently of the trust funds. Such advice, certainly, could not have come from the late Mr. Lowell.

But one thing the present Mr. Lowell thinks he can afford to state positively, notwithstanding his avowed ignorance of

the partnership accounts, and of the relative capital of the father and son, at the time of the father's death. He says:— “Mr. Wright Boott was a man of fortune, *certainly* worth, *when I was his partner, at least \$70,000.*” [L. p. 58.]

Now, if Mr. J. Wright Boott was really worth \$70,000, at the time of his father's death, in 1817, besides what his father left him, (which was the former statement, according to the “generally received opinion among the clerks,”) he ought to have been “certainly worth,” upon the premises of the “Reply,” a great deal *more* than \$70,000, when he was a partner with Mr. Lowell. For, his father left him a store, worth, as Mr. Lowell says, \$16,000, [L. p. 58.] and a present share of his estate, then estimated, according to these same clerks, at \$15,000, or according to their *highest* estimates, at \$16,000 or \$17,000, [L. p. 52.] besides the reversions; and although Mr. Lowell thinks there must have been a tremendous loss in the winding up of the affairs of the old firm, and that it was sufficient, in his judgement, to bring down, to less than \$10,000 a share, an estate, which, by “the generally received opinion among the clerks,” had been estimated at \$15,000, \$16,000, and even \$17,000 a share, yet, it must not be forgotten, that Mr. J. Wright Boott's proportion of that loss, as a partner, ought to have been counteracted in some degree by the *profit*, which, *according to the “Reply,”* was earned in the business of the *second* house; to say nothing of several years' accumulation of interest on so large a sum as Mr. J. Wright Boott is thus assumed to have been worth at the outset. Yet, when he became a partner of Mr. Lowell, in 1822, that gentleman can not say that he was, then, “*certainly* worth” more than, “*at least,* \$70,000.” But, to make assurance doubly sure, that he was “*certainly worth*” that sum “*at least,*” the “*Reply*” undertakes to specify, in a note, the particulars, of which the \$70,000 is supposed to have consisted; viz:

“He had in our business a capital of	\$40,000
The store in State Street was worth	16,000
He had advanced to Wells & Lilly,	14,000

Now, Mr. Lowell, I admit, ought to know, with certainty, what capital Mr. Boott put into the business of Boott & Lowell. I say nothing of stocks, belonging to the trust fund, transferred to that house at a later date, since I understand Mr. Lowell to speak, here, of the capital put in at the formation of the house, January 1, 1822. But where did that capital come from? Does Mr. Lowell know that? Passing by all questions about moneys of the estate, or supposed losses of Kirk Boott & Sons, No. 2, here are Mr. J. Wright Boott's guardianship accounts, which show us, plainly, \$45,500, borrowed from the estate of his wards in 1821, and not invested in any thing, known or conjectured, unless in his mercantile business. [Ante, p. 237.] Can Mr. Lowell explain that? If not, the \$40,000 of capital, put into the house of Boott & Lowell, has no tendency to prove that Mr. Boott was, in truth, worth any thing. Let us look, then, at the other items.

As to the store, which came from his father: Mr. Lowell says it was, at that time, "worth \$16,000." Was it so? It had been appraised in January, 1818, at only \$9600. [B. App. p. 13.] It was burnt down in April 1825, [L. p. 59.] and, after rebuilding, was sold, it is true, for \$16,000, in 1831. This valuation of the *new* store, in 1831, Mr. Lowell takes for the value of the *old* store in January, 1822, though it had been appraised, only four years before, at no more than \$9600.

The advances to Wells & Lilly, which are set down, here, as part of Mr. Boott's private fortune, (being the same for which Lilly's note of \$14,000 was given,) we are elsewhere told, was a debt "which had grown out of *advances made by Mr. Boott, senior, to his son-in-law, Mr. Wells, and subsequent advances by Mr. Wright Boott himself.*" [L. p. 87.] Now, if Mr. Lowell wishes us to take this item, or any part of it, as evidence of Mr. J. Wright Boott's private fortune, it seems to me he ought to tell us *how much* of these advances had been made by Mr. Boott, senior, and how much by the son; and he ought also, to tell us *when*, and *out of what funds*, the advances were made by the son; for Mr. Robert

Lilly's note to Mr. J. Wright Boott happens to have been dated December 31, 1828; so that I am quite unable to see how Mr. Lowell should have estimated *that* as part of Mr. Boott's private property during the existence of the firm of Boott & Lowell, which came to an end in 1824. He must, at least, go back of that note, and show whether any thing had been lent, by Mr. J. Wright Boott, out of funds belonging to himself, either to Mr. Lilly, or to Wells & Lilly, before 1822, if he means to satisfy us that Mr. J. Wright Boott had, personally, something to lend.

And this is *all* the evidence, Mr. Lowell can give us, of the reasonableness of the "generally received opinion among the clerks" in 1817, according to his present recollections of it, or of the grounds of his own certain knowledge, in 1822, that Mr. J. Wright Boott, was, then, worth "at least \$70,000." All we can *see* to be his own is the store; and, how much he owed at the same time to his father's estate, we can *not* see from any statement of the "Reply." We shall find, however, from other evidence, that it must have been a considerable sum.

CHAPTER LIV.

LOSSES OF THE FIRST HOUSE OF KIRK BOOTT & SONS. BASIS, ON WHICH THE SECOND HOUSE, PROBABLY, BEGAN BUSINESS.

Mr. Lowell's aim being to build up as much property as any body would be likely to credit for Mr. J. Wright Boott, and to bring down a distributive share of the father's estate as low as any body would be likely to credit, his next step is, to account for the reduction of the latter, from the first received opinion of the clerks, by at least one third.

This is done as follows :—

"The copartnership, however, met with very heavy losses after the death of Mr. Boott.

These were owing in part to the political circumstances of the times. The double duties which had been levied during the war were repealed in 1816, and there was in consequence a great fall in the value of merchandise. Kirk Boott & Sons had a very heavy stock of goods, which were sold at a great sacrifice. Their country customers, who had bought very largely at the high prices, under the excitement of the return of peace, suffered in the same way, and began to fail on every side. To crown this series of misfortunes, Mr. Kirk Boott, of London, a relative of Mr. Boott, senior, who had formerly been a partner of the house of Boott & Pratt, and who was the agent in England of Kirk Boott & Sons, became bankrupt in June, 1817, owing them a very large sum of money, I think about £10,000 sterling. Of this, very little was ever recovered.

From what I saw and knew of these losses, I came to the conclusion, that, if the sum coming to the heirs as residuary legatees had not, before they occurred, much exceeded the received opinion, these events would reduce it below the sum of \$10,000 for each, which the will permitted the executors to advance to some of them. When it came to my knowledge, some years afterwards, that Mr. Wright Boott had paid them all \$10,000, and upwards, I felt assured that he had overpaid them ; and this opinion I have expressed to nearly every one of them during the last twenty years." [L. pp. 26, 27.]

We have, now, not even a reference to the "received opinion" of others. It is all Mr. Lowell's own opinion ; which, he says, he has expressed to nearly every one of the heirs during the last twenty years. That period, reckoning from the date of his publication, would carry us back as far as 1828. What could have induced him to express such opinions then ? How did he learn, at that early day, that Mr. Boott had paid only \$10,000, (or "\$10,000 and upwards," as Mr. Lowell, admits, notwithstanding the account claims to have paid \$10,000 only,) to each of the heirs ? When I conversed with him in May, 1831, he says, he knew nothing about Mr. J. Wright Boott's affairs, except what I told him. [L. p. 30.] He certainly never learned the fact, now stated, from me ; for I believed that \$20,000 was the sum paid, or allowed, to several of the heirs, and believe so still ; nor did I ever hear the matter discussed or alluded to by any body before the summer of 1830, nor by most

of the family, until after the fact of a great loss in the business of the foundry had become notorious among them ; and that knowledge was followed, at no great distance, by the release of 1833. When, and how, I repeat, then, did Mr. Lowell find occasion to express these opinions *to the family*, prior to the troubles about a settlement of accounts, in 1844?—unless he means (and that is not what he says,) that he expressed them to Messrs. Lyman and Ralston particularly, when he was negotiating with them, in 1831.

Mr. Lowell, however, grounds his declared opinion, now, upon what he *saw* and *knew* of the losses of Kirk Boott & Sons, No. 1, specifying several causes of loss, and their effects, of which he makes himself a personal witness. I profess to know nothing, personally, about any of them, but claim the privilege of sifting Mr. Lowell's statements.

1. Loss by a failure in England, in 1817, is mentioned, of startling magnitude. But its *amount*, which is the only important point, Mr. Lowell does not undertake to speak of with his usual confidence. He says it was, “*I think, about £10,000 sterling;*” and of this, he adds, “*very little was ever recovered.*” Now on this latter point, whatever the amount of the debt may have been, I think I can make Mr. J. Wright Boott himself a witness against Mr. Lowell ; for, according to his statement to me, in May, 1821, as contemporaneously reported in my letter to my father, above cited, when I had no conceivable motive to represent the case *better* than it was, it seems that there were “large debts due in England, which *have been* very doubtful, and are not yet, *altogether*, discharged.” [Ante, p. 465.] The fair inference from this language is, that the *greater part*, instead of “*very little,*” had then been recovered. And Mr. Boott’s representations to me were, that, from the balance of debts in England, still outstanding, considerable collections might be confidently expected.

2. As to the repeal of the double duties ; that measure took effect June 30, 1816, after several months notice.* It

*See the Act of February 5, 1816, whereby the double duties, then about expiring, by their former limitation, were extended to June 30, 1816, when they expired.

may have caused some failures, *after* the testator's death, in January, 1817, as well as before, for aught I know, among debtors to the house, for goods previously sold to them. But, in respect to the "very heavy stock of goods," which, according to the "Reply," remained *unsold*, at Mr. Boott's death, I am unable to perceive why the full effect of any fall in their value, occasioned by that reduction of duties six months previously, should not have been notorious at that time ; and if so, whatever loss there may have been from that cause, and also whatever loss may have accrued from failures, which had already occurred, such considerations must have entered, one would think, into the "received opinion" of any tolerably intelligent set of clerks, in January, 1817, concerning the value of the property then on hand.

3. Mr. Lowell, however, after declaring, as above, the conclusion, to which he came from what he saw and knew of the losses, proceeds thus :—

"As I left their employment *in less than a year* after the formation of the *second partnership* of Kirk Boott & Sons, I cannot speak with so much confidence of the result of the *liquidation* of the outstanding business of the *first firm*. Since, however, that liquidation could not begin, by the terms of the will, until the 19th of March, 1818, and the large stock of goods on hand sold very slowly, it remained subject to the appalling reduction of prices, which, as every importing merchant will well remember, was consequent upon the resumption of specie payments by the Bank of England *in the latter part of this year or the beginning of the next*. They had not, like the new house, the opportunity of availing themselves of the low prices to replenish their stock." [L. p. 27.]

Mr. Lowell, then, by this paragraph, professes to *know* nothing, after all, about the result of the liquidation. But, fearing the inadequacy of all the causes, he had assigned, to account for so large a loss as his case requires, another is now surmised, viz., the resumption of specie payments by the Bank of England, *in the latter part of 1818, or early in 1819*, as is said ; and appeal is made to the memory of all importers for "the appalling reduction of prices," caused by that event. Mr. Lowell may be right in this ;—he certainly ought to be better informed than I, on such a point ; but, if so respectable

a writer as Mr. McCulloch may be presumed to be of equal authority with Mr. Lowell, on the history of the Bank of England, I may be allowed to suggest, that, according to that writer, Mr. Peel's Act, as it was commonly called, though *passed* in 1819, fixed the period for resumption in 1823; and though the Bank did, in fact, resume its specie payments in anticipation of the time fixed by law, it did not *begin* to do so till May 1, 1821.* The errors of the "Reply" seem to be as remarkable in matters of public history, as they were lately shown to be in simple arithmetic. One is almost tempted to say, "It really seems as if Mr." Lowell "never could be right even by accident." [L. p. 71.] I will content myself, however, with saying, that, since the resumption, did not begin till May, 1821, a winding up and realization of the affairs and effects of the old firm, if begun, as the will required, March 19, 1818, ought to have been pretty substantially accomplished within the three years, from 1818 to 1821, and before the unfavourable action of a new currency in England could have been felt. The memory of importing merchants, therefore, I imagine, will not greatly aid Mr. Lowell on this point; although it may enable them to perceive, that the *second house*, which was formed by the sons in the spring of 1818, and began its liquidation in the latter part of 1821, would be likely to feel the full force of that measure, and of the preparations made for it.

These are all the causes of loss to the first house, which Mr. Lowell is able to suggest; and, in respect to all of them, the reader, I think, cannot fail to have noticed the singular departure from that positiveness and boldness of statement, (except as to a resumption by the Bank of England in "the latter part of this year, [1818,] or the beginning of the next"!—there is not the least doubt of *that*,) which usually characterize Mr. Lowell's remarks.

I may also point out the singularity of the circumstance, that he should not be able to speak with any confidence of "the *result of the liquidation* of the outstanding business of the *first firm*," [L. p. 27.] and should disclaim all personal

* McCulloch's Dictionary of Commerce. Title, "Bank of England."

knowledge of "the profit and loss of *either* of the firms of Kirk Boott & Sons," [L. p. 36.] when he is found to congratulate himself, soon after, on the *certainty* of the following averments :—

" Fortunately, these facts were *certain*: that *nothing* had been taken from the capital in trade, belonging to his father's estate, *except the trust funds*, during *either* of the partnerships of Kirk Boott & Sons; and that the final liquidation of the whole business was detailed in the books of Boott & Lowell, which had been preserved." [L. p. 59.]

And yet it appears by the account of 1844, that, after the withdrawal of the capital of the trust funds, invested in 1818, not a farthing was collected by the executor, on account of the estate, until \$69,389 99 was "received of Boott & Lowell in liquidation of the outstanding property of Kirk Boott & Sons," [L. p. 38.]—meaning of course, Kirk Boott & Sons, No. 1, since that was the only house, in whose liquidation the estate could have been, lawfully, concerned.

In this connexion I would call the attention of the reader to the fact, that there is not, throughout Mr. Lowell's book, one word of explanation, nor the least notice taken, of the very extraordinary circumstance, pointed out above, namely, that the executor, should have been able to collect, from the testator's interest in the first firm, upwards of \$100,000, *within fifteen months* from the testator's death, (as is proved by the account of 1818,) and should *not* have been able to collect *one dollar more*, on that account, for *nearly four years next succeeding*, (that is during the whole term of the partnership formed by the sons,) and yet that, *after* the lapse of those four years, he should have been able to collect, during the term of the partnership of Boott & Lowell, near \$70,000 more !

Whence comes this gap of nearly four years, in the process of liquidation? How happens it, that, from the day of the termination of the first house, when its liquidation should have begun, to the end of the duration of the second house,—within which time, the liquidation of the first ought to have been mainly completed,—not a dollar is realized? Whence

comes it, that absolutely *nothing* should have been collected, in that period of nearly four years, although \$70,000, nearly, were realized within the subsequent two and a half years of Boott & Lowell? Is such a fact probable? Is it, from the nature of the business to be wound up, I may say, possible? Yet, such is the plain statement of the account of 1844, on Mr. Lowell's theory, that it is a complete and perfect account of the executorship!

And here is another inquiry. How came Boott & Lowell, who, we see by their own advertisement, were empowered to liquidate the concerns of the *second* house only, in which the estate had rightfully no interest, to collect and pay over, *not* to the late members of that house, but to *the executor*, for his interest, as such, in the *first* house, this \$70,000? For such is the statement of the account. Is there, can there be, any reasonable explanation, except that the second house took up the stock and business of the first house, just where they found it, and then, having carried on the business, partly with the old stock, and partly with new importations on their own account, four years longer, passed over for liquidation to Boott & Lowell *all that remained* in their hands at the expiration of that term, that remainder being property of the estate due from them to the executor? These queries, and the inferences they lead to, are not new. I relied upon them formerly, as I have shown, [Ante, pp. 533, 534.] and they stand wholly unanswered by Mr. Lowell!

Let us look, for one moment, at the probability of the arrangement, which I suppose to have been made.

The testator had authorized the executor, it will be remembered, to lend, to such a firm as the sons established, the shares in his estate of the minor children, then three in number. The three sons, who were members of that firm, had a right, of course, to put into it their own shares. This, with the shares of the minors, made up two thirds of the estate. Dr. Boott's share, to the extent of \$20,000, I always understood, had been paid to him, when he left this country. There remained only the shares of Mrs. Wells and Mrs. Lyman; and the former had already received a large part of her

share by advances made and charged to her by her father, as appears by an instrument, in the nature of a second codicil to his will, proved and filed in the probate office, but not heretofore printed. I now make from it this extract :—

MEMORANDUM OF MR. BOOTT, SENIOR.

" BOSTON, NOVEMBER, 30, 1813.

" The enclosed notes, viz: one, dated January 28, 1813, signed by William Wells, Jr., for four thousand dollars, and the other, dated January 30, 1813, signed by William Wells, Jr., for twelve thousand dollars, are my property. I have charged myself with them in my book of disbursements, this day. If I should die, without having made any arrangement with the said William Wells, Jr., respecting them, I hereby order the note, dated January 30, 1813, for twelve thousand dollars, and the interest due thereon, to be cancelled, and given to said Wells, without making any charge of it. But, the other note, dated January 28, 1813, for four thousand dollars, and the interest due thereon, *I order to be charged to my daughter Frances*, the said Wells's wife, for which she must account, *with the other sums already charged to her*, out of the legacy, which I have bequeathed to the said Frances."

Although, therefore, it was a great irregularity in the executor, to put the estate, as an undivided and unsettled interest, into the second partnership, still he was authorized to use in that business, under proper limitations, so large a portion of it, (six shares out of eight, excluding Dr. Boott's,) and it is manifest that he was, habitually, so regardless of all forms and mere legal duties, that nothing can be more improbable than any such nice distinctions, made by him, as the case strictly called for.

To take the remaining stock of the old firm into the new concern, and to employ all the funds of the estate in its operations, Mr. J. Wright Boott, considering the business safe and profitable, would, undoubtedly, have regarded as beneficial for the *estate*, as well as for the brothers, whom he took into partnership; and, acting upon his own impulses of generosity towards those members of the family, who were *not* partners in the new concern, nothing would be more likely for *him* to do than to take the old stock into the new concern *at its cost*, even if it had, as Mr. Lowell suggests, somewhat fallen in value. Nor is it very unlikely

that Mr. Kirk Boott, then fresh from the army, or Mr. James Boott, then just come of age, both entirely without mercantile experience, would have acquiesced in such an arrangement, considering the advantages to be derived from identifying themselves, as completely as possible, with an old established house, whose business, according to the advertisement, was to be "*continued*" by them. Whatever fall may have occurred in the value of the stock on hand by a recent change in the tariff of duties, this was, probably, looked upon as a thing temporary in its effect upon the general business of the house, and likely enough to be soon counteracted by other causes. None of the copartners could possibly, at that time, have foreseen the *continued* fall of prices, which Mr. Lowell says was caused by the subsequent restoration of the currency in England,—an event, which may have had, I admit, a silent operation, in preparatory measures, some time before the resumption actually occurred.

Now, if this arrangement, (which, having no personal knowledge about it, I do not, of course, state as a fact, but as a probability for the reader to judge of,) was the real basis, as I incline to believe, on which the new house started, what would have been the consequence? All the loss, arising from causes referred to by Mr. Lowell, except the failure of the large debtor in England, must inevitably have fallen *entirely* upon the *second* house, and *not upon the first*. Whatever loss had *previously* fallen upon the *first* house, Mr. J. Wright Boott must have shared, as a partner, proportionally with the estate. One fourth of it was his; and, if Mr. Lowell is any where near right concerning the probable extent of the loss, as derived from causes operating *before* March, 1818, (when the first house expired,) one fourth of it was sufficient to have taken off very nearly the whole of the small property, which I suppose Mr. J. Wright Boott to have had, independently of that, which his father left him. Whatever losses on the original stock arose from causes operating *after* March, 1818, they fell upon the second house, exclusively, under the arrangement, which I assume; and although that house had, as Mr. Lowell suggests, the power

to replenish its stock, and doubtless did, by new importations at lower prices, still, according to Mr. Lowell, prices were *constantly* declining for a *series* of years, and constantly disappointing the expectations of importers. The second house seems to have been, *always*, operating upon a *falling market*.

Mr. J. Wright Boott's own share, as a partner in the second house, of the losses from this cause, upon a four years' business, added to the first purchase of stock at a high cost, is extremely likely to have much exceeded his distributive share of the divisible estate. But this was not all. He stood sponsor to the estate for all, that his brothers owed on their shares of the loss, beyond what they were able to pay. If he had sunk *his* share of the estate, they had sunk *theirs*; and if he had permitted them, as will be found probable, to withdraw, in the mean time, and expend, or use for their own purposes, in the course of nine years, (from his father's death to the time of the settlement, which he made with them in 1826,) the greater part, or the whole, of their expected patrimony, or more, how could he have stood otherwise, at *that time*, than a large debtor to the estate?—and, indeed, how could he have stood otherwise at the time of the formation of Boott & Lowell? The heaviest part of the advances, for personal expenditure at least, must have been made previous to that time; especially to Mr. Kirk Boott, who, after that time, was drawing a salary of \$3000 from his agency at Lowell.

All Mr. Lowell has said, therefore, in reference to causes of loss in the liquidation of the first house, tends to confirm me in my belief of large loss encountered by the *second* house; and yet, nothing in the case requires the hypothesis of any such enormous amount of loss, by that house, in its regular mercantile business, as Mr. Lowell is pleased to represent that my former estimates suppose. This I shall make clear.

CHAPTER LV.

LOSSES, BY THE SECOND HOUSE OF KIRK BOOTT & SONS. ARGUMENTS OF THE "REPLY" TO DISPROVE THEM. EVIDENCE OF PAYMENTS TO MR. JAMES BOOTT, AND TO MR. WELLS.

LET us now see what Mr. Lowell has to say to my suggestion of large losses in business, sustained by the *second* house.

He denies them altogether. He says there was a small profit. [L. p. 51.] Allow me to ask, then, which is likely to know best, he, or Mr. Kirk Boott, who was one of the partners? Mr. Kirk Boott writes, in 1826, (at which time the result of a business, terminated more than four years before, must have been fully ascertained,) "*our losses in business proved very heavy;*" "*he, [Mr. Wright Boott,] is more in advance for me than I expected.*" [Ante, p. 501.] Yet, Mr. Lowell, in the face of this declaration by one of the parties, has the temerity to declare that there was no loss, but a small gain!

How, then, does he get over Mr. Kirk Boott's express assertion to the contrary? His course of argument is this:—

"Now the copartnership of Mr. Wright Boott, Mr. Kirk Boott and Mr. James Boott had lasted four years, from 1818 to 1822, and they *must* have settled four annual accounts. Mr. Kirk Boott had been the most active member of the firm, conversant with every detail of the business, and was a very accurate merchant. The only losses, therefore, that *could* have surprised him, were those resulting from the sale of their residual stock and the collection of the debts." [L. p. 46.]

Hence, the reader is expected to infer, that Mr. Kirk Boott did not mean to speak of the general result of the business, but of the mere winding up of what may have been left, after previous profits had been divided. That is, the reader must infer that "*our losses in business,*" stated without qual-

ification, did *not* prove "very heavy," though Mr. Kirk Boott says they did.

But where is the evidence of the assumed previous profits? The partners may have settled four annual accounts, for aught I know, as Mr. Lowell assumes; and they may have found, for aught he knows, loss in every one of them. This seems likely enough with a constantly falling market. But, says the "Reply," "the only losses, that could have surprised him, [Mr. Kirk Boott,] were those resulting from the sale of their residual stock, and the collection of the debts." What is that to the purpose? Mr. Kirk Boott expresses no surprise at the fact of loss. That he probably knew from year to year, so far as it was ascertained. All he intimates is, that it turned out, by the final winding up, *larger* than he had anticipated. My brother, he says, "is *more* in advance for me than I expected." This is the whole expression of what Mr. Lowell calls surprise. It is not unlikely, however, that the business of that period may have been a constant deception to the partners themselves, in regard to the amount of loss by over-valuation of stock on hand, from time to time, compared with the results of decreasing prices; and the losses may, on that account, and because of changes in the currency, have turned out very much larger in the winding up than was foreseen. And I may remark, by the way, that although Mr. Kirk Boott is known to have been highly intelligent, and to have turned out an excellent man of business in the agency at Lowell, I am at a loss to imagine how he should have been, while a member of the firm of Kirk Boott & Sons, and especially in the outset of their business, "a *very* accurate merchant." He had been brought up in the army, and was never in a counting-room in his life, until he went into this house *as a partner*. He was obliged, here, to learn, by his own experience and excellent discernment, under his brother, Wright, who was, himself, in my opinion, not "a *very* accurate merchant," that knowledge of the details of business, which most merchants have acquired in the service of others, before they begin to operate for themselves. It would not seem very strange to me, if the full

extent of the losses, they were encountering in their business, had not been duly measured and appreciated, at the time, by *any one* of the partners.

But Mr. Lowell, after stating such reasons, as I have cited above, for doubting, *a priori*, the fact of a loss by the second firm, declares, positively, as follows:—"The inquiries I have made, for the purpose of this reply, have *settled the question*. There were *no such losses*." [L. p. 49.]

Indeed! How does he make that out? Why, he says, truly, in the first place, that Mr. Kirk Boott, having been "a subaltern in the British army," till he went into the house in 1818, had no property beyond his patrimony. In the next place, we are told, that, from 1822 to 1826, (the date of his settlement with Mr. J. Wright Boott,) he supported his family at Lowell, and informed the directors of the Merrimack Company that he could not live within his salary of \$3000 a year. This fact, also, I have no doubt of. Thence it is argued,—"Whatever sum, therefore, beyond his patrimony, he refunded to his brother, in the settlement of 1826, he *must* either have borrowed, or derived from the *profits of the earlier years of the copartnership*. There *could be* no other source." [L. p. 49.] And then, alluding to the sum borrowed from me for the purpose of the settlement, the "Reply" proceeds as follows:—

"I find, that there remained in his hands, [Mr. Kirk Boott's,] after the adjustment of his accounts, the following property:

Two shares in the Boston Manufacturing Company,	\$2,700
Ten shares in the Merrimack Company,	10,000
Ten shares in the Locks and Canals, on which had then been paid \$350 each,	3,500
His furniture, worth, perhaps,	4,000
	—
Deduct the amount borrowed of Mr. Brooks,	20,200
	—
	10,000
	—
	\$10,200

"He retained then the full amount of his patrimony, as stated by Mr. Wright Boott in the account which we are now discussing, and which must be taken, *prima facie*, as true." [L. p. 50.]

This is followed up by a statement of Mr. James Boott's property, (in answer to my suggestion that his share of the loss was probably never fully restored to Mr. J. Wright Boott,) thus :—

"Mr. Brooks will, perhaps, have the goodness to inform us what golden opportunities Mr. Kirk Boott, a lieutenant in Lord Wellington's army, had enjoyed of accumulating a large amount of property.

"That Mr. James Boott settled with his brother at the same time that Mr. Kirk Boott did, and repaid to Mr. Wright Boott his proportion of the over-estimate of the profit of the preceding years is certain; for he transferred to Mr. Wright Boott, February 28, 1826, five shares in the Merrimack Manufacturing Company. And what was his position after the settlement? He had remaining,

Five shares in the Boston Manufacturing Company, at \$1300,	\$6,500
Five shares in the Merrimack Company,	5,000
	<hr/>
	\$11,500

These shares he still retains.

"It thus appears, that, after paying their personal expenses, which, to my knowledge, during the year I was with them in their counting-room, were regularly charged to them,—and which must have much exceeded (especially in the case of Mr. Kirk Boott, who was a married man,) the interest of \$10,000,—both of the junior partners had their patrimony unaffected by any losses in business. In fact, there had been some small resulting profit.

"Thus fails utterly the attempt to account for a diminution of the property on the ground of any losses except such as occurred during the first partnership, when the father's estate was justly chargeable with his share of such losses." [L. pp. 51, 52.]

This, then, is Mr. Lowell's demonstration, which he conceives to have "settled the question!" But does it not prove a little too much? How happens it, that Mr. Kirk Boott, and Mr. James Boott, "after paying their personal expenses," should have come out of the copartnership *just alike*, or at least within \$1300 of each other, in property? Mr. James Boott, a young unmarried man, lived with his mother, at very little necessary expense. Mr. Kirk Boott, who could not live at Lowell on \$3000 a year, had supported his family in Boston, during the partnership, at much greater cost than that, judging by his general style of living.

Now, if there were really no profits earned by the house, whether it was supposed, at the time, to be earning them or not, Mr. Kirk Boott, in the five years from his father's death to the end of the copartnership, must have taken up, in mere expense of living, nearly, or quite, his whole present patrimony, supposing it, as I do, to have been \$20,000. If it was only \$10,000, as Mr. Lowell contends, so much the sooner must it have come to an end. And Mr. Kirk Boott would have been the more likely to draw freely for his household expense, if he erroneously supposed that the house was making money, as Mr. Lowell suggests; for, the "Reply" assures us, that, while the formation of the house of Boott & Lowell was under consideration, Mr. Kirk Boott told Mr. Lowell, "that the business was too good to be abandoned!" [L. p. 28.] Mr. James Boott, on the other hand, living with his mother, could hardly have expended, without extravagance, more than the income of his supposed patrimony. This near coincidence of property, therefore, in 1826, if the fact were as Mr. Lowell states, would seem to indicate some cause in operation not alluded to by him,—something else than the mere preservation of "their patrimony, unaffected by any losses in business." [L. p. 51.]

Now, Mr. Lowell knows very well one fact, which is here entirely concealed. I never supposed that Mr. Kirk Boott had come out of "Lord Wellington's army" with any thing more than his inheritance. But I might have suggested, though I did not, in my former pamphlet, one "golden opportunity," which Mr. Kirk Boott had enjoyed, of accumulating property, before the settlement with his brother in 1826.—an opportunity judiciously improved by him, according to his circumstances, and as well known to Mr. Lowell, as to any man living. I refer to his Chelmsford speculation.

He was the proprietor, individually, it seems, by the correspondence before referred to, of a large interest in the original enterprise. By advances from his brother, he was enabled to take and pay for, and by the same means, coupled with loans elsewhere of considerable amount, (some of which I might point out,) he was enabled to hold, until he could

advantageously sell, a large number of shares in the first stock of the Merrimack Company. That stock, besides yielding great dividends after the works were in operation, rose so high, that, in December, 1825, when the stock had been *doubled*, and *just after a dividend*, I myself bought, at *sixty per cent. advance!* The right of doubling his stock, in 1824, must, alone, have been worth to Mr. Kirk Boott, a considerable sum. From Mr. Lowell's statement, it seems, he had sold out, at the time of the settlement with his brother, (March, 1826,) all but ten shares in that company, and that he took and held ten corresponding shares in the Locks and Canals, which corporation, upon its then foundation, was formed out of the Merrimack Company as at first constituted, and became the owner of all the land and water-power, except what was needed for the use of the Merrimack Company, as a manufacturing corporation. The stock of the Locks and Canals, besides making great dividends after a few years had passed, rose from its par of \$500, as high, at one time, as \$1800 or \$1900 a share.

This fact is notorious; and Mr. Kirk Boott sold one half of his Locks and Canals, when they were at or near, their highest point. That gentleman, himself, informed me, not long before his death, that the loan of \$10,000, with which I had been able to accommodate him, in 1826, had been the means of earning for him, at least, twenty per cent. a year, beyond interest. In view of these facts, I think the reader will agree with me, that few men have had a more "golden opportunity" of accumulating a handsome property from means at first wholly borrowed,—with no property to borrow upon,—than Mr. Kirk Boott had enjoyed by his fortunate position as one of the first founders of Lowell, with the aid of funds advanced to him by his brother. And, although he left but a moderate property at last, this is to be accounted for only by the heavy debt to be paid off for the losses in his old mercantile business; by the inevitable anticipation of his patrimony through large family expense while he lived in Boston; by the continuance of a family expense beyond his salary after he removed to Lowell; by the ad-

vances and loans he was obliged to rely upon, at first, for his purchases of manufacturing stock ; and by the heavy drawback of an interest account constantly running against them. I ought, indeed, to add one other cause, namely, his extraordinary and unremitting devotion to the interests of his employers, which, after the first fruits of the original speculation were reaped, and after the full care of the regular business had devolved upon him, rendered it impossible for him, with his high sense of honour and duty in such a trust, to improve, as many men might, the tempting opportunities of speculating on his own account in the growing property about him.

The particular profits, mentioned above as having accrued to Mr. Kirk Boott from his Locks and Canals, and from my loan to him in 1826, at simple interest without even collateral security, were realized, it is true, after the settlement of that year with his brother ; but, without going more particularly into the course of Mr. Kirk Boott's operations previous to that time, I think the reader will see opportunity enough for him to have acquired, in the first four or five years of the Chelmsford speculation, with a title in the outset to ninety, out of six hundred, shares, sufficient property to enable him, with the aid of the \$10,000 loan from me, to pay off the \$37,000 of debt, beyond his \$20,000 of patrimony, which I suppose him to have paid to his brother in March, 1826, and yet to have had, as Mr. Lowell says he had, about \$10,000 left, after that settlement, beyond his debt to me ;—especially, when we see that \$27,300 of the debt to his brother was paid in the stock of the Boston Manufacturing Company at \$1300 a share, though then worth in the market only \$900 a share. It is in perfect keeping with Mr. J. Wright Boott's character, to believe, that, from feelings of generosity to his brother, he had, considerately, waited till a handsome profit had been accumulated out of the Chelmsford speculation, before he pressed for a settlement ; and it is manifest, that repayment of the large advances made on that account, and for the settlement of losses in the old mercantile partnership accounts, which proved " very heavy," could not

have been had at a much earlier period without stripping his brother of every thing, and indeed, until some considerable amount of profit had been earned, could not have been had at all. Yet Mr. Lowell, well knowing the fact of this Chelmsford speculation, and of a large profit made in it, undertakes to say, without qualification, that "whatever sum, beyond his patrimony, he [Mr. Kirk Boott,] refunded to his brother Wright, [in the settlement of 1826,] he must have borrowed, or derived from the profits of the earlier years of the copartnership. There could be no other source!" [L. p. 49.]

In respect to Mr. James Boott, Mr. Lowell has made one statement, which, if it be a fact, is new to me. In accounting for sixteen shares of the Merrimack stock, which stood in Mr. J. Wright Boott's name, and were sold by him, in 1824, Mr. Lowell, for the purpose of answering the suggestion, that, for aught that appeared, the profit upon that sale ought to have been credited to the estate in the account of 1844, states, that twelve of the shares belonged to Mrs. F. Boott and her children, and that the *other four* "belonged jointly to himself, Mr. Kirk Boott, and Mr. James Boott, being the residue of their interest as owners of one fourth part of the original speculation," [L. p. 72.] meaning the Chelmsford speculation. That is, the "Reply" treats that speculation as a part of the business of Kirk Boott & Sons, No. 2, and assigns one fourth part of it to that house.

If Mr. James Boott had any such interest in that concern, it seems, at least, not to have been known to the leading associates. Mr. J. Wright Boott and Mr. Kirk Boott, according to the account given by Mr. Appleton in the correspondence, appear to have subscribed, *separately and individually*, for ninety shares each. Their shares, together, were one hundred and eighty, out of six hundred,—considerably more than "*one fourth part*," but,—which is more material,—*Mr. James Boott does not appear to have been a party to the transaction.* The fact I believe to be, that he was admitted, afterwards, by his brothers to a small interest under them; and it may be that his profit upon that sub-interest, added to

the five shares of Merrimack, which he transferred to Mr. J. Wright Boott, February 25, 1826, when they were worth a considerable advance, and to the ten shares of Locks and Canals, which he transferred to him, on the same day, may, together with his share of the patrimony, estimated at \$20,000, have been sufficient to repay his share of the loss in the business of the firm, and also the advances, which had been made on his particular account, and to have left the ten shares of manufacturing stock, which, Mr. Lowell says, he still owned, at the time of the "Reply." Since his personal expenses ought to have fallen much within the interest of his patrimony, he had not a like occasion with Mr. Kirk Boott to draw largely from the firm, or to place his brother under advance for him, unless on account of the Chelmsford speculation, (if he had any considerable interest in that,) and for the settlement of his share of the losses of the house. His total debt to Mr. J. Wright Boott, in 1826, ought to have been, and appears to have been, so far as we have means of judging, much smaller than Mr. Kirk Boott's, and may, contrary to my first supposition, have been wholly paid. Yet, the fact that he was permitted to retain ten shares of manufacturing stock, after the partnership settlement, is not very strong proof to my mind that the debt was, in truth, fully paid. Mr. J. Wright Boott was too irregular in his generosities, to permit any confident conclusion to be drawn from such a fact.

It now appears, however, from Mr. Lowell's statement, [L. p. 51.] that, after the partnership settlement of February or March, 1826, Mr. James Boott had remaining, and retained, up to the time of the writing of the "Reply," five shares in the Boston Manufacturing Company, at a cost of \$1300 a share, and five shares in the Merrimack at par, making, together, \$11,500. On the other hand, it is admitted [L. p. 51.] that, on the 28th of February, he transferred to his brother, in the settlement between them, five shares of the Merrimack, which, at its market value, could not then have been worth less than \$6000. And it appears, by the records of the Locks and Canals, that he transferred in like manner, at the same time, ten shares of that stock, on which, the "Reply"

tells us, \$350 a share had then been paid in, [L. p. 50.] and which, with the advance upon them, may be safely set down at \$4000. That is, \$10,000, in cash, or its equivalent, was actually paid.

But Mr. James Boott must also have been credited, in any settlement of that date, with the profit upon his share in the Chelmsford speculation, so far as any portion of the speculation had been on a joint account, in which he was interested. That there was such a joint account, on which sales were made, we are told by the "Reply," although we are kept in the dark concerning its amount. That a large profit, in proportion to its amount, must have been realized, we know from the successful character of the enterprise, and from the rapid rise in the market prices of the Merrimack stock; and since Mr. James Boott was not an ostensible subscriber to the Chelmsford enterprise, we may fairly presume that his share of the proceeds went into his general account with Mr. J. Wright Boott. Yet, besides his share of that profit, whatever it may have been, \$10,000, at least, was paid by him to Mr. J. Wright Boott in the transfers above mentioned. What can we infer from all this, but large loss in the business of the second house, of which Mr. James Boott's share, was thus repaid, in whole or in part, by his share of the profit in the Chelmsford speculation and by transfers of stocks, above shown, to the amount of \$10,000?

One cannot but observe, besides, a remarkable coincidence, now apparent, which serves to corroborate the idea, that a distributive share of the divisible estate had always been estimated at \$20,000, and that all parties, who had opportunity to obtain possession of their property before Mr. J. Wright Boott's great embarrassments, received that amount. Mr. James Boott was still holding, according to the "Reply," property, which had cost to Mr. J. Wright Boott \$11,500

But he had previously parted, in the settlement of the old partnership account, with five shares of Merrimack, and ten of Locks and Canals, which, at par, had cost,

8,500

This makes, exactly,

\$20,000

What could this property have represented, except Mr. James Boott's estimated share of his father's estate? He had no other property when he went into the house of Kirk Boott & Sons, No. 2; he earned nothing there,—for its business resulted in a heavy loss, as Mr. Kirk Boott declares. No part of the Chelmsford speculation had stood in Mr. James Boott's name; the profits upon that must have been, like the losses in trade, only items of an unsettled account with Mr. J. Wright Boott, until the settlement of 1826. Yet, previous to that settlement, he held, as his individual property, stocks, which had cost \$20,000. Had he not been allowed, then, by the executor, to take up funds of the estate to that amount, because it was understood to be his proper share of it?

So, in respect to Mr. Wells, it appears by the extract from a letter of Mr. Ralston, heretofore introduced, [Ante, p. 331.] that that gentleman held, in 1827–8, six shares of Merrimack, six of Locks and Canals, and three of the Boston Manufacturing Company; and I find, from the records of the Locks and Canals, that, in February, 1826, at a date nearly corresponding with the partnership settlement of Mr. J. Wright Boott with his brothers, Mr. Wells transferred to Mr. J. Wright Boott six shares in the Locks and Canals. That is to say, previous to that transfer, Mr. Wells was holding shares, in the two companies above-named, which, according to the prices given by Mr. Lowell for the accounts of Mr. Kirk Boott and Mr. James Boott, had cost upwards of \$14,000. Whence did they come, but from the funds of the estate? And how much, if a distributable share of the estate was \$20,000, would Mr. Wells have been entitled to? It has been already shown, that the testator had directed that a particular note of Mr. Wells for the sum of \$4000, taken up by the testator, should, with the interest upon it, be charged to Mrs. Wells, “for which she must account, *with the other sums already charged to her*, out of the legacy which I have bequeathed to the said Frances.” [Ante, p. 559.] What these “other sums” were, I am not informed. They were, at least, large enough to be an object of attention to

the testator, and to be treated as an advancement. If we suppose them to have amounted, all together, to three or four thousand dollars only, we shall arrive at the conclusion that another heir, who received his portion early, was dealt with upon the basis of \$20,000, or thereabouts, to a share.

Besides these stocks, which Mr. Wells held on account of the balance of his wife's patrimony beyond the advances charged to her by the testator, it is personally known to me, that Mr. J. Wright Boott made loans of money, occasionally, to Mr. Wells. The ten shares of Locks and Canals, transferred by Mr. Wells to Mr. J. Wright Boott, in February, 1826, I infer to have been a repayment of some of these loans. It appears to have been called for at the time of Mr. J. Wright Boott's call on his brothers for the settlement of the over-advances on their respective accounts, because he was then intending, as we are told by Mr. Kirk Boott, "to settle the estate, and pay over the balances," to those of the heirs, who had not already received their full shares.

It may also be noticed, that some light is thrown, by the facts now shown to the reader, upon the manner, in which payments were made to some of the heirs. It will be remembered, that Mr. J. Wright Boott was an original subscriber, in his own name, to fifty-six shares of the first stock of the Merrimack Manufacturing Company, which entitled him to fifty-six shares of the second issue, made in 1824; but that he appeared to be a subscriber for forty shares only of that second issue; and it was remarked, that his right of subscription for the remaining sixteen shares must have been transferred to somebody, and yet did not appear to have been *sold* for the benefit of the *estate*, since the premium upon them does not appear in the account of 1844. [Ante, p. 391.] Now, if the original papers on this subject were hunted up, I think it would be found, that Mr. J. Wright Boott transferred his right to subscribe for ten of those shares to Mr. James Boott, and his right to subscribe for the other six to Mr. Wells. This, I believe, was the source of their title to the ten shares and the six shares, which they are respectively found to have held in the Merrimack Company;

and their ownership of these shares in the Merrimack Company gave them their title to the corresponding number of Locks and Canals. The funds, necessary to pay the assessments on all these shares, except so far as they were paid by accruing dividends, were, undoubtedly, furnished by Mr. J. Wright Boott; indeed, I understood so, at the time, in respect to shares held by Mr. Wells; and, in that form, the full amount, which they were respectively entitled to receive from the estate, was gradually paid up by the executor,—at least, such is my inference,—though without any regular settlement. In the mean time, the old partnership business of Kirk Boott & Sons, No. 2, was wound up with great loss; and other loans and advances had been made, which led to the reclamations of February, 1826, when a purpose was entertained, but for some reason unfortunately never executed, of settling the estate, and paying over all unpaid balances.

The payments and loans to Mr. Wells, above mentioned, were, of course, independent of the sums afterwards covered by the note of Robert Lilly, as liquidator of the firm of Wells & Lilly, for the sum of \$14,000, which note was dated in December, 1828, and afterwards secured by mortgage, as above shown.

The reader now sees some of the reasons, which may well have led Mr. Wells to believe, concerning Mr. J. Wright Boott, that "He has probably given to all much more than they were entitled to receive from their father's estate." [L. p. 56.] The phrase used by Mr. Wells, is not so inappropriate as it might at first seem; for it was one of Mr. J. Wright Boott's peculiarities always to speak of his irregular distributions as *gifts*. Upon one occasion, after the payment of the \$10,000 to Mr. Lyman, he transferred to that gentleman, in addition, nine shares of manufacturing stock, which Mr. Lyman understood to be a further payment on account of his wife's share of the estate; but Mr. Boott afterwards, chose to speak of them as a gift, and Mr. Lyman, not choosing to hold them on those terms, retransferred them to Mr. Boott. This fact I had from Mr. Lyman, and the trans-

fers and retransfers appear by the records of the companies.
[B. App. pp. 30, 32.]

A degree of uncertainty, of course, hangs over some of the foregoing inferences, while we are left to grope in the dark, without regular accounts to guide us. But why does Mr. Lowell put us to speculate in these matters? Has he not the evidence of these settlements in his hands? Can he not show, if he would, what they were, precisely? Why, especially, having this evidence at hand, does he, instead of producing it, enter into a specious argument to show,—from the slight circumstance of a nearly equal amount of property possessed by Mr. Kirk Boott and by Mr. James Boott, respectively, after the partnership settlement, and an amount nearly corresponding with the sum, which Mr. Lowell assumes to have been a share of the estate,—that there could have been no loss in the business of the partnership, and no absorption of their patrimony in that? And why, when he presents that argument, does he withhold, in that connexion, so material a fact as the Chelmsford speculation? And why does he withhold so material a fact as the transfer by Mr. James Boott, at the time of the settlement, of ten shares of Locks and Canals, in addition to the five shares of Merrimack, which I had found to have been transferred, and stated formerly, being all the evidence then known to me of a settlement by Mr. James Boott?

Connected with these concealments, every fact stated, only tends to confirm the idea of a large loss sustained by the second house, sufficient, in my belief, to have swept off Mr. J. Wright Boott's own share of the common patrimony; and a loss by the elder house is insisted on by Mr. Lowell of a magnitude sufficient to have absorbed all Mr. Boott was worth, in my estimation, before his father's death. And although this latter loss, whatever it may have been, must have fallen threefold on the estate, it will be remembered that it was *after* all that loss was, or should have been, fully *ascertained*, that Mr. J. Wright Boott not only represented the shares of the heirs to be \$20,000 each, but acted upon that representation in allowing that amount to some of the heirs,

as would seem, by the settlements he made in several instances, so far as Mr. Lowell has been pleased to afford us light to discern the terms of those settlements.

One further inquiry will naturally present itself to the reader. If Mr. Kirk Boott, and possibly Mr. James Boott, acquired, from their shares in the Chelmsford speculation, profit enough to enable them, with the other means shown, to repay their respective shares of loss in the business of Kirk Boott and Sons, No. 2, and to have something left, why did not Mr. J. Wright Boott also? Simply because he did *not sell out*, as Mr. Kirk Boott did, (and Mr. James Boott's original interest, if he had one, must have been sold out also, any considerable portion of his Merrimack stock,—the right to which, and its rapid advance in market price, and the large dividends made after the works were in complete operation, constituted, so far as I am informed, the whole profit of the Chelmsford enterprise. Mr. J. Wright Boott, it seems, took, and *held*, the whole of his original subscription; he added to it, at the time of the second issue, more than he then sold out; and he appropriated nearly or quite the whole of that which he held, finally, if not at first, in his own mind, as it would seem, (though no act, till long after, openly evinced it,) partly to Mrs. F. Boott and his wards, and the residue as a substitute for the stocks belonging to the trust funds of his father's estate, which he had transferred to Boott & Lowell, and which they had sold. He kept his interest in the Merrimack Company, apparently, in so vague and uncertain a position that what was his, and what the property of one party or of another, whom he represented, he could not probably, himself, have easily determined. He seems to have turned this property, in his own mind at least, to one account or another, as circumstances at the moment seemed to make expedient, and as he thought to be for the interest of others, perhaps, rather than his own, until his necessities for money, to be used in the foundry, compelled him, at last, to pledge the stock, and to cover it with such embarrassments that he had no longer its control.

For the same reason, (pressure for money,) he was unable

to hold the shares in the Locks and Canals, which he became entitled to, and took, share for share. That is to say, holding at that time eighty shares of Merrimack in his own name, he was an original subscriber in his own name, for eighty corresponding shares of Locks and Canals ; but, within the *first two years*, before the stock was fully paid in, before any dividends had accrued, and while the shares were worth in the market only about par and interest, he sold sixty-nine shares. There were but eleven left ; of these, eight were taken on his guardianship account. He acquired, in 1826, sixteen more, through settlements with persons, for whom he was in advance ; but, within two years, he sold out all but his guardianship shares. Mr. Kirk Boott, on the other hand, continued to hold a fair proportion of this stock to a late period, some of it to his death, and it added considerably to his estate.

Mr. J. Wright Boott parted, early, with the whole of his Locks and Canals, as above stated, except a very few shares retained on his guardianship account ; and the shares, he parted with, produced him little or no profit ; since the operation, with this stock, was quite a reverse to that of the Merrimack stock. The Merrimack stock rose very rapidly, and early sales were made at great profit. The Locks and Canals stock rose slowly at first, and very gradually, to near four times its par, and the profit upon this was to the long holder. How different would have been the result of Mr. J. Wright Boott's trust account, had he sold for the estate one half of the Merrimack stock, which, though in his own name, really belonged to the estate, at its market price of fifty or sixty per cent. advance, and had he taken and retained, for the same account, the corresponding shares of Locks and Canals ! He kept that, of which he should have sold a part, and sold that, of which he should have kept a part, as the event proved ; and he sold his Locks and Canals, not so much because his judgement dictated a sale, so far as appears, as by reason of his necessities for money, growing out of speculations, engaged in, unwarrantably and beyond his means, though, as he no doubt thought and intended at the time, for the benefit

of the family. This fact helps us to understand the remark, formerly made by Mr. Lowell :—"If you, Mr. Brooks, or I, or any good man of business, had had the care of that estate, what a noble property it would have been." [B. App. p. 48.]

It will be perceived, therefore, that I give to Mr. J. Wright Boott ample credit, as I have ever done, for having acted throughout, mainly, with the design of aiding others of the family more than himself, and certainly not upon merely selfish principles; but I show, at the same time, by his course of management, the grossest unfitness to discharge the duties of an executor and trustee; and I show that the consequences of his mismanagement, however generous the motives, which may have led to it, were ruin to himself, great loss to the estate, and utter inability to repair the consequences of his generosity to some by rendering bare justice to others. And this is my whole case in respect to Mr. J. Wright Boott.

I think I have accounted also, satisfactorily, for the fact that he made no profit for himself out of the Lowell speculation, because, so far as he had any clear idea upon the subject, he considered that as belonging to the parties, whose funds he used. And so, in equity, it did; his own property being utterly lost, although he may not have been, and probably was not, at that time, fully sensible of this fact, and certainly was not ready to avow it, until the sudden disclosure to Mr. Kirk Boott and myself in 1830.

In the mean time, it is not remarkable that Mr. J. Wright Boott should have been commonly reputed rich, before his embarrassments in the foundry became known. A man, who subscribed so largely to new enterprises, who paid promptly what he subscribed, who held at one time \$96,000 of the Merrimack stock, and \$30,000 of the Boston, and took eighty shares of the Locks and Canals,—all standing (prior to 1826) unpledged, and in his own private name,—and who was, at the same time apparently wielding a considerable capital in trade, first as a member of the firm of Boott & Lowell, and afterwards in the business of the foundry,—such a man might well be supposed to be possessed of a large fortune by those, who knew nothing of the private trusts, on which the

property was held, or of the funds employed in its purchase, or of the state of his accounts with members of his own family. If the received opinions of the clerks had been gathered, shortly before the exposition of 1830, they would, perhaps, have amplified his "private fortune" to two or three hundred thousand dollars. Yet, who does not now see that he was, in truth, at that time, hopelessly insolvent? And who can reasonably doubt, upon the facts disclosed, that, if all his affairs had been brought to a state of complete liquidation during the existence of the house of Boott & Lowell, he must have been found, even at that early period, quite unable to account, in money, or its equivalent, for the property of his father's estate?

CHAPTER LVI.

CONCEALMENT OF FACTS, CONNECTED WITH THE HOUSE OF BOOTT & LOWELL. SUMMARY OF PARTICULAR LOSSES, THROUGH THE MISMANAGEMENT OF MR. BOOTT.

Having now disposed of the two firms of Kirk Boott & Sons, we come to that of Boott & Lowell, formed Jan. 1, 1822, dissolved July 1, 1824.

Here, at least, Mr. Lowell cannot plead ignorance or uncertainty; and we have a right to look, in this part of the case, for a clear and satisfactory discharge of that solemn "duty to the memory of Mr. Boott," which, according to Mr. Lowell's own estimate of duty, promulgated at the outset of his publication, "requires that I [Mr. Lowell] should give some account of such facts within my own knowledge, as may elucidate the matters in controversy." [L. p. 22.] Yet, strange to tell, it is of this house, and of the executor's man-

agement during its existence,—a period embracing so large and active a portion of the executorship, and so many important transactions of the house concerning the estate, in which Mr. Lowell must have participated and acted,—that the “Reply” discloses least! Much time and space are devoted, in that pamphlet, to the supposed history of the several preceding firms, and to a consideration of the probabilities of gain or loss in each, affecting the relative position of Mr. J. Wright Boott and his father’s estate. Of all this, it appears that Mr. Lowell has little or no absolute knowledge. But of those transactions, which he was personally acquainted with, connected with the house of Boott & Lowell, whose books were in his own possession, what has he disclosed?

We are told, when it is an object to make out a large private fortune for Mr. Boott, that he put into the concern of Boott & Lowell, originally, a capital of \$40,000. But we have cause to believe, from what we have seen, [Ante, Ch. 24.] that this capital was all borrowed; and we are not told that Mr. Boott increased his property by the operations of Boott & Lowell. Is it not fair to infer, from this silence, that his property, if he had any, was in fact diminished thereby by a losing business? The probate account of 1844 also tells us, that, after the formation of the trust fund of 1818, by moneys drawn from the first house of Kirk Boott & Sons, near \$70,000 more of the estate’s money came to the executor out of the house of Boott & Lowell. How it got there,—what it proceeded from,—how and when it was paid over,—the “Reply” does not condescend to inform us, although its author was most emphatically called upon, by my former pamphlet, to explain such matters. We now find, that, besides this \$70,000, (nearly,) mentioned in the probate account as coming from Boott & Lowell, for property of the estate realized after the \$117,000, (nearly,) which had been invested in the trust fund of 1818, at least \$52,000, of the specific property of that trust fund, perhaps much more, was taken away from the fund, and transferred, specifically, by the executor, to Boott & Lowell, and that this specific trust property was, afterwards, disposed of by Boott & Lowell; but what

was done with the moneys, we have never been informed to this day. They may have gone, sooner or later, to pay for more or less of the Merrimack shares, purchased by Mr. Boott in his own name. And they may not. They do not appear, at any rate, to have gone, directly, or immediately, to that use. We have, up to the present moment, no account of them, nor of the interest or profits upon them, while in the hands of Boott & Lowell; nor of the interest and profits upon the \$70,000, which we are told of as coming from liquidation by Boott & Lowell.

I do not mean to suggest a doubt, (though I have no information on the subject,) that Boott & Lowell may have settled an account, at some time, with Mr. J. Wright Boott; that is, that Mr. Boott may have settled an account with himself and his partner. But what was it? What gains and losses in the liquidation does it show? What charges and allowances to the liquidators does it contain? Why does not the probate account, drawn up by Mr. Lowell from the books of Boott & Lowell, show the facts concerning stocks of the estate bought and sold through that house, and concerning the employment of other moneys of the estate while lying there? Why is it not even intimated by the account that such transactions ever existed? And why is Mr. Lowell, while professing to enlighten the public, and declaiming against me for groping in darkness and ignorance in search of a conjectural truth, utterly silent in his pamphlet upon those transactions, intimately known to himself? Why are we told of the probabilities of great loss to the estate in the winding up of the first Kirk Boott & Sons? Why are we told, with the positiveness of personal knowledge, that there was no loss sustained by Mr. J. Wright Boott in the winding up of the second Kirk Boott & Sons? In neither of these houses had Mr. Lowell any concern, nor, as he says, did he ever, once, even see the partnership leger. And why are we not told whether Mr. J. Wright Boott increased or diminished his private fortune in the business of Boott & Lowell,—the only house about whose affairs Mr. Lowell really knows any thing? And, especially, why are we kept uninformed

respecting \$120,000, at least, perhaps much more, of the estate's money, which that house had the handling of, besides \$40,000, probably, of the money of Mr. Boott's wards, for which the estate was liable? *

I shall hazard no conjectures on this subject. I pause for another "*Reply.*" I shall have occasion to allude to the subject again, in connexion with other points of Mr. Lowell's conduct. At present, I only ask the reader not to forget these facts: That the probate account states *nothing* touching any connexion of Boott & Lowell with the estate's property, except that it charges the executor with \$69,389 99, as received from them in liquidation of the outstanding property of Kirk Boott & Sons, without showing when, how, or in what sums, it was received by the executor; that it states gain and losses on sales of stocks belonging to the trust fund of 1818, without showing when, or to whom, or by whom, the sales were made; that all the sales, so far as traced, which involve *loss*, now turn out to have been made either to Boott & Lowell, or by Boott & Lowell, as agents for the executor; that the final sales of these stocks, when sold in the name of Boott & Lowell, were made by Mr. Lowell, himself, while Mr. Boott was in England; that there were no investments made by or for the executor, that I have been able to discover, adequate to take up the proceeds, and corresponding with the sales in times and sums; that the account was formerly complained of by me for its extreme generality, and for its omission to state such particulars as were needful, to enable an interested party to see whether

*Capital originally put in by Mr. Boott, apparently borrowed from his wards, to whom the estate was liable,	\$40,000 00
Proceeds of stocks belonging to his trust fund, transferred afterwards to Boott & Lowell, as the records of transfers show,	52,853 43
Money said to have been collected for the executor by Boott & Lowell, from the outstanding effects of Kirk Boott & Sons, and charged as such in the account of 1844,	69,389 99
Amount apparently furnished by Mr. Boott from his father's estate, or for which the estate was liable,	162,243 42
Query, respecting U. S. six per cent. stock, not yet traced,	22,000 ?
If this amount, furnished by Mr. Boott, passed into the business of Boott & Lowell, how much did Mr. Lowell furnish to that house?	

the executor had rightly charged himself with all he was chargeable for, even supposing its positive statements to be literally true ; that it was also complained of for its omission to state much, that must have been received by the executor, to accord with his own representations and acts, and for its omission to connect the sums, admitted to have been received, with the property, admitted to be on hand, at the end of the account, or to show what intermediate investments and changes of investment, or what other use of the money, had been made ; that Mr. Lowell declares the account to be full and complete as it stands,—a true history of the entire executorship,—and, that, while he professes to give a full explanation, according to his knowledge, of all the mercantile transactions, connected with the property of the estate, for the purpose of establishing the truth and completeness of the account,—holding it to be a *duty* to disclose such facts within his own knowledge, “as may elucidate the matters in controversy,”—he has, hitherto, entirely concealed all those facts, which are now proved, respecting changes of investment in the time of Boott & Lowell, and respecting sales of approved stocks at a loss, either to or by Boott & Lowell, without any corresponding re-investment, unless as capital in trade, or as a loan to Boott & Lowell ; that he has undertaken to settle questions, in the mind of his readers, by inference from remote and collateral evidence, which accounts and entries in the books of that house must determine, directly and conclusively, one way or the other, but which are, nevertheless, kept wholly out of sight ; and, finally, that truths now detected, have been obscured and covered up by bold general averments of a contrary tendency, fallacious arguments upon partial disclosures of particulars, which will not even bear the test of comparison among themselves, and by a cloud of invective, sarcasm, and irony, founded either upon charges I never made, or upon mistakes of mine in matters scarcely material to the main issues, and upon other mistakes imputed to me, but which turn out to be either mistakes, or mis-statements, of the “Reply.”

I believe, I have now shown, that the account of 1844

fares no better, upon a view of affairs previous to 1830, so far as they are known, than it did by a comparison of its statements with facts of subsequent date, which are accurately known. I believe, I have shown, that, although nobody, now living, may know what the estate of Mr. Boott, senior, really turned out to be, enough is known to make it morally certain, that a much larger amount of property came to the executor's hands than has yet been accounted for, and that Mr. Lowell can give a much better account of it, if he pleases, than has yet been given. I have shown a probability, at least, that \$100,000 more than the probate account states was received by the executor, and that \$60,000 more than is therein stated was paid by him to some of the heirs, or permitted to go to their use; that Mrs. Boott's trust fund was deficient, upon the account of November 18, 1844, as it stands, even after allowing the stocks to be charged at their cost to Mr. Boott, by about	\$3,700
That the trust fund for the aunts is not thereby accounted for at all, amounting to about	11,100
That the shares of Boston Manufacturing Company, charged to the estate at \$1300 a share, came to Mr. Boott in the settlement of a partnership account, not concerning the estate, at a time when they were worth only \$900 a share, and that this difference, for aught that yet appears, could not, justly, be charged to the estate, being, upon twenty-one shares,	8,400
That, although most, if not all, the other heirs probably received \$20,000,* as the reputed dividend of the estate, due equally to all, Mrs. Brooks was under-paid by	10,000†
	<hr/> 33,200

* Dr. Francis Boott, when he went to London, in 1818; Mr. Wells, by payments, at various times, deducting advances charged by the testator; Mr. Kirk Boott, and Mr. James Boott, by credit in the partnership settlements of 1826; Mr. Lyman and Mr. Ralston, by the payment of \$10,000 each, in 1821-2, and by allowance for the residue in the settlement of the concerns of the foundry, in 1831.

† If furniture, purchased without consulting her, and placed at the time in the

Brought forward,

33,200

That Mr. William Boott,—charging to him all, that seems to have been properly chargeable against his patrimony, out of his expenses in Europe, and, taking that amount to be as Mr. Lowell states it,—was, probably, under-paid by about

18,000

51,200

And that Mr. J. Wright Boott, without the previous authority, consent, or knowledge of his mother, subtracted from the principal and income of the trust fund, after it was re-established in 1830, for the payment of his own debts, due and paid chiefly to Mr. Lowell, about

65,700

This exhibits an actual ascertained deficiency, due to the heirs and their mother, at the time the account was rendered, (without reckoning interest on the principal sums,) of

116,900

If interest were charged upon them, the sum would probably amount to two or three hundred thousand dollars! Yet, the account claimed a “cash balance due to the executor” of \$25,000! And this account was permitted, by compromise, for the sake of peace, to pass with an allowance of that claim, for the purpose of paying Mr. Lowell! And Mr. Lowell, upon the strength of that allowance, has had the hardihood to assert, at first, in my absence, and without my knowledge, but since, publicly, in print, that *this* fact is *proof* that I had *falsely* charged Mr. Boott with mismanagement of his father’s estate, and unfitness for such a trust! Thus, even my own concession for his benefit,—in suffering the account to pass without question, and thereby allowing Mr. Lowell to pay himself out of the property of the estate,—is, most unscrupulously, used as his principal weapon against me!!

light of a gift, is considered to be a charge upon her patrimony, and Mr. Lowell’s assumption that it cost \$4000 is adopted, interest on the unpaid share would exceed that sum.

CHAPTER LVII.

IN WHAT MY SUPPOSED CHARGE OF MISMANAGEMENT, AGAINST MR. BOOTT, CONSISTED.

If the views, I have now submitted to the reader, concerning the statements and the omissions of the probate account, compared with well established facts, are but a tolerable approximation to the truth, they must, at least, set one question at rest. That is to say :—supposing me to have charged Mr. Boott, in his life-time, as plainly, offensively, and inexcusably, as Mr. Lowell could desire, with having mismanaged his father's estate, and with having occasioned great loss to it, by neglect, or disregard, of the ordinary duties of an executor, the charge, instead of being a false one, as Mr. Lowell gave out, would now stand proved to have been uncontestedly true. In respect to the course, I took, to effect a change of the trusteeship, so far as my justification depends upon the single question whether the executor had managed the funds, committed to his keeping, properly or improperly, I have nothing more to say. But, there are other points of inquiry, touching Mr. Boott's fitness, in 1844, to be the family trustee; and the "Reply" presents other issues, respecting the propriety of my conduct towards Mr. Boott, and, also, respecting the conduct of Mr. Lowell towards me.

Most of these topics connect themselves, more appropriately, with another branch of this controversy, relating to Mr. Boott's own conduct, in other than pecuniary matters, and to his deranged state of mind. But, some of them are so immediately connected with the subject of the probate account, that it seems proper to dispose of them here.

One question, concerning myself, arises thus :—The impression created, and apparently intended to be created, by the "Reply," is, that I had taken pains, without provocation or excuse, to injure Mr. Boott's reputation in respect to his

conduct as executor, and that I had, purposely, insulted him, and wounded his feelings, by charging him, personally and offensively, with the fact. Is there any just foundation for this idea?

I answer by resuming my narrative.

We left it with a view of the state of Mr. Boott's affairs at the date of the settlement of his guardianship account, early in 1835 ; from which point of time, I have only taken some prospective glances. There was no prominent event, indeed, affecting the subject of accounts, until the year 1844, when circumstances made it imperative that an executor's account should be settled. In the meantime, Mr. Boott had remained out of business, living in his mother's house, going into no society, and occupied with nothing but his green-house and garden, of which he was extremely fond. The reduction of his debt to Mr. Lowell from \$46,000, (as is admitted, and much more as I conjecture,) in 1835, to \$25,000, in 1844, by applying to it the surplus income of the trust funds in Mr. Lowell's hands, was constantly going on, as before shown ; but this was disclosed to nobody, interested in the property or its income, either by Mr. Boott or by Mr. Lowell. The heirs, generally, were profoundly ignorant of the state of the trust property. All I knew about it was the position, in which it was left in May, 1831, followed by a settlement with Lyman & Ralston, in September following, and a settlement of the guardianship accounts, in 1835 ; to which I may add my own observation of the expenditure at the mansion-house in Bowdoin Square, coupled with some occasional information from Mr. Lowell. Thence, I gathered, that Mrs. Boott, who had removed to England in 1836, received, regularly, \$5000 a year for her own expenditure ; that the debt to Mr. Sturgis had been paid ; and that the debt of \$25,000 to Mr. Lowell remained unpaid.

In the mean time, from causes not yet to be discussed, it came to pass, that, between the time of the first pressure of embarrassment in the business of the iron foundry, (preceding, considerably, the disclosure, in 1830, to Mr. Kirk Boott and myself,) and the circumstances, which immediately led

to the stating of the probate account, Mr. Boott had come to be at variance with *every one*, successively, (though not with all at the same time,) of his brothers, sisters, and brothers-in-law, living in this country, unless Mr. and Mrs. Wells are an exception. This, I shall presently show more distinctly. Mrs. Boott had thought proper to withdraw to England, and to remain there. Mr. James Boott soon followed his mother, and never returned. Mr. Kirk Boott died in 1837. Mr. J. Wright Boott and Mr. William Boott, except when the latter was at Lowell, lived together at the mansion-house, until a circumstance occurred, in 1843, which compelled Mr. William Boott to withdraw from it. Mr. J. Wright Boott, after that, remained its sole occupant, except that one or more of his young nephews of the Wells family lived with him, as his guests, and that Mrs. Ralston staid there, for a short time, as a visiter from Philadelphia, in the autumn of 1843, and, again, in the summer of 1844.

Whether Mr. Boott had, or had not, become insane, was, at this time, a question, which had grown up in the family, occasioning much excitement. Mr. Lowell's answer to the evidence on this head I shall consider in its place. But, from whatever cause, the family was completely broken up and dispersed; and it had become apparent, though no such intention had been distinctly announced, that Mrs. Boott would never return to reunite her household. Hence, a sale of the mansion-house, (a property then grown too valuable to keep, if it was no longer to be put to the use intended by the testator,) became a subject of consideration; and the conclusion was finally arrived at, by all parties interested, that the time had come when the house ought to be sold, and the proceeds invested, according to the will, for the benefit of Mrs. Boott, during her life, and of the heirs at her decease.

Those of us, who had no confidence in Mr. J. Wright Boott as a suitable trustee, intended, whenever the sale should be made, to bring about, if possible, some arrangement to place the proceeds in security. The executor, it will be remembered, was empowered, with Mrs. Boott's

assent, to make a sale of this estate in certain events. Mr. Lowell, as his agent, concluded a bargain, in October, 1843, which fell through in consequence of Mr. Boott's refusal to ratify it. Another was made, in the spring of 1844, by Mr. Boott himself, as Mr. Lowell now affirms; [L. p. 8.] at any rate, Mr. Boott and Mr. Lowell concurred in approving it; and this bargain would, no doubt, have been immediately carried into effect, if *they* could have given a good title. But the lawyers, whose business it was to look to that for the purchaser, perceived that, in strictness, neither of the events had happened, whence, according to the will, the executor was to derive his authority to *convey* the estate; and, consequently, that his deed, though confirmed by Mr. Lowell, as the attorney of Mrs. Boott, would not be valid. Deeds from *all the heirs* were deemed necessary. It became, therefore, the business of each heir to determine for himself, whether he would join in a conveyance of the estate or not, and upon what terms.

This question was proposed to me, for the first and only time, in April, 1844, by Mr. Nathaniel I. Bowditch, acting as the conveyancer of the parties. I at once declined, as matters then stood; and, in the conversation, which ensued, I was led to assign, briefly, my reasons for a course, that might, otherwise, have seemed extraordinary and perverse; since I was obliged to admit that I thought the estate ought to be sold, and that I did not object to the price, though I thought it a good bargain for the purchasers.

The reasons, which I gave to Mr. Bowditch, were, that, unless some other arrangement were made, the proceeds, (\$46,000,) would go into the hands of Mr. Boott, and be entirely at his own disposal; that I knew he contemplated investing them, to a considerable extent, in a manner, which I thought not only unsafe, but positively contradictory to the provisions of the will; that the only sureties on his probate bond were Mrs. Boott and Mr. William Wells, who, in case of any considerable loss, would not only be sufferers themselves, but unable to make good the loss of others; that former occurrences led me to feel no confidence in Mr.

Boott's prudent management of trust property ; that I considered him to be, moreover, decidedly insane, on points affecting his relation to several of the family ; that he had never settled his executor's accounts, though twenty-seven years had elapsed ; and that he was, in my opinion, for many reasons, a very unsuitable person to be the family trustee. I added, that I should not object to signing the deed, if the trust property could be placed in the hands of some responsible person, who would be acceptable to all concerned, and would give good sureties. The exact language used, I can not pretend to recall ; but, I think, I may safely refer to Mr. Bowditch for the fact, that this was the whole substance of what I said, and that there was no undue excitement, or intemperance of expression, in the manner of saying it.

Such is the origin, and such was the extent, at least, on that occasion, of my supposed defamation of Mr. Boott. On other occasions, I said nothing respecting his conduct as an executor, with such exceptions as I shall state.

I had never, before, spoken of his mismanagement to any one out of the family, to the best of my recollection and belief, except to Mr. Lowell ; nor had I spoken of it, even in confidential communications to members of the family, further than some necessity required, unless a private letter to Mr. Wells, written in September, 1842, is to be deemed an exception. That letter I shall presently reprint from the "Reply," and shall, then, narrate the circumstances, which led to it.

In 1830 and 1831, the state of affairs, known in full only to Mr. Kirk Boott and Mr. Lowell and myself, was, necessarily, a subject of partial discussion with Messrs. Lyman & Ralston, in reference to their claims on the executor, which they were then pressing. But there is no pretence that I said, or did, any thing to injure Mr. J. Wright Boott, at that period. On the contrary, I was acting as a common friend, appealed to by both parties, and acting, chiefly, on his behalf.

At the time of the making of the release in 1833, I conversed, no doubt, respecting the executorship, with other

parties to that instrument; but only in reference to its subject,—the discharge of the executor from all claim for any balances, that might be due to them, beyond what they had respectively received, reserving their future claims on the particular trust funds, not then distributable. So far from doing, or saying, any thing to injure Mr. Boott, on that occasion, I not only joined in that release, but I, in fact, drew up the paper, and did all, that I properly could, to induce the other heirs to sign it. The position of the trust property, I did not think myself at liberty to disclose to any of them, while Mr. Kirk Boott thought proper to remain silent; and, after his death, I still felt bound by his example, until a necessity arose for positive action. After that release, I believe, I never alluded to the subject of the executorship,—unless, perhaps, in some private conversation with Mr. Kirk Boott, or Mr. Lowell, who knew, at least, as much as I did,—until my letter to Mr. Wells of September, 1842. Some time after the writing of that letter, I conversed, confidentially, with Mr. William Boott, on the whole subject of his brother's conduct, when it had become so extraordinary as, in his opinion, and mine, to be incapable of any solution but that of insanity.

With these exceptions, though other matters had occurred, causing great irritation in the family, and occasioning much discussion concerning Mr. J. Wright Boott, I had observed total silence for thirteen years, on the subject of his management of the family property. I preserved that silence until I was called upon to decide, whether I would sanction, by an act of my own, the placing of \$46,000 of the family money in his hands, to be invested and managed by him, in addition to the property already there; and, when so called upon, I simply assigned to the counsel employed, in general terms, and in the manner above stated, my principal reasons for declining.

Mr. William Boott, it was known, also declined. The fact that a title could not be given, unfortunately, soon became notorious; but not by my agency. An important bargain had been made, which could not be performed.

Many persons were interested in the purchase. There was a dead stop, and the cause of it leaked out from some quarter. Mr. Bowditch, necessarily, informed his client, Mr. Darracott, who was the agent for the purchasers, of my refusal to sign the deed. Mr. Darracott, of course, conversed with Mr. Lowell about it. He, also, called upon me, soon after, to know what it meant, and urged the impropriety, as it seemed to him, of my refusal. The tone of his remarks compelled me to state to him, with more warmth, certainly, than I did to Mr. Bowditch, the principal causes of my refusal. This conversation, and others of like character, with him, at several interviews of his seeking, I shall have occasion to refer to, again, with more particularity.

The existence of some dissension in the family had been, previously, known to many persons. My opinion of Mr. J. Wright Boott's *insanity*, when these subjects were referred to, in a way to put me on the defensive, I repeatedly expressed. But the subject of his past mismanagement of the family funds, and of the consequent loss they had suffered, I was always careful to avoid, both before and after my conversations with Mr. Bowditch and Mr. Darracott. Whether these were not proper and necessary occasions for me to state to the party, and his counsel, what I did state, the reader will judge.

I felt, at any rate, that the responsibility of taking care of the family interests devolved peculiarly upon me, in consequence of my knowledge of the past, and in consequence of the death of Mr. Kirk Boott. The reader will remember, that, in 1831, that gentleman had thrown upon me the whole responsibility of acting for the family, and had bound himself to acknowledge, as his act, whatever deed I might conclude upon. [Ante, p. 280.] A new crisis had now arrived. He was gone, and he had left me, by his will, a trustee, jointly with Mr. Lowell, for his family. Mr. Lowell was acting, on the present occasion, avowedly, as the agent of Mr. J. Wright Boott, and, as it seemed to me, without much regard to the interests of that trust. Mr. William Boott was the only business man remaining in the family, and the only

brother on this side of the Atlantic. I had informed him of the facts known to me, and he concurred in my views. I had no doubt, whatever Mr. Lowell's opinion may be, that Mr. Kirk Boott, had he been living, would have concurred in them also. Mr. Wells, I knew to be uninformed of matters, necessary to be known, in forming a correct judgement on the case. Although a gentleman of most estimable and amiable qualities, I must respectfully insist, that he was by no means a man of business, nor a man likely to take the stand, which, in my judgement, circumstances then required. He had declined doing so upon a former occasion, when I thought his position in the family called upon him to take a decided part, and would have enabled him, I think, had he so viewed it, to have righted somewhat the family affairs, and, perhaps, to have prevented much of the mischief, which followed. But, as matters stood, he, though not a very active partisan himself, was the apparent and nominal head of a party, consisting, chiefly, of ladies in the family, who looked on Mr. J. Wright Boott as a persecuted man. Circumstances, besides, which I shall presently explain, had placed a sort of barrier between Mr. Wells and me, and had occasioned a cessation of intercourse, though by no means of old regard on my part, and, I hope, not on his. I did not look, therefore, for counsel or co-operation in that quarter, and did not communicate to him what I knew he would rather not hear, and perhaps, under surrounding influences, would not have greatly heeded. Neither Mr. and Mrs. Lyman, nor Mr. and Mrs. Ralston, had any interest in the question; since they, by the settlement with Mr. J. Wright Boott, in 1831, had assigned to him all their reversionary right in the mansion-house and the trust funds.* Dr. Francis Boott and Mr. James Boott, as well as Mrs. Boott, were in London. It was in vain to attempt to make them understand the whole of such a case by letter, especially when there was disagreement among parties here. I did not attempt it. Mr. William Boott, in the course of his

* Mrs. Ralston, afterwards, acquired an interest *adverse* to that of the other heirs, under Mr. J. Wright Boott's will. But this did not exist at the time I speak of, and I did not know of it till after Mr. Boott's death.

correspondence with Dr. Boott, and Mrs. Brooks, by some occasional letters, either to Mrs. Boott or to Dr. Boott, did transmit certain statements, calculated to inform them, partially, of the state of affairs. These were counteracted, in a degree, by opposing statements from members of the Wells family, and from Mrs. Ralston; but very ineffectually, until Mr. Lowell became a correspondent also; and he, from his apparently disinterested position, excellent judgement, and supposed friendly regard for the interests of the family, soon settled all questions in London, as he had done with most persons here, conformably to his own views.

This subject I must return to. At present, I introduce it, thus far, only to show that I was placed in a position, which made it necessary for me to take the responsibility, in conjunction with Mr. William Boott, of acting in opposition to Mr. Lowell,—backed, as he was, by uninformed, and misinformed, portions of the family,—in carrying out such measures as my judgement dictated, for the preservation of the family property, and by which measures it is to me a great satisfaction to believe that I succeeded in preserving it. I was called upon, in effect, to protect the interests of some of the family against themselves, with the certainty of much temporary dissatisfaction, but with the certainty, also, that,—if I should take a different course, and a great part of the remaining family property should be lost, in consequence of an arrangement sanctioned and actively promoted by me, with the knowledge I had of Mr. Boott's former management,—the same parties would complain of me more loudly, and with more reason, when they should come to know the whole truth, and to feel its consequences.

I was particularly led to this view of the subject by a knowledge of the fact, that Mr. Boott had obtained his mother's consent, (that of the heirs, in his then state of mind, he did not think worth asking,) to use the proceeds of the sale of the mansion-house, to build for himself a house in the country, with a hot-house, and garden, adapted to his tastes. With his ideas and tendencies on such subjects, it was, and

is my belief, that a great part of the family property would have been found, in a few years, hopelessly buried there.

I mentioned this intention of Mr. Boott formerly, [B. p. 94.] and Mr. Lowell, who knows the fact, does not deny it. Indeed, it appears, that when the account was settled, or about to be settled, in a manner to effect the payment of Mr. Lowell's debt, and a transfer of the remaining property to a new trustee, (which would, of course, prevent the investment proposed by Mr. Boott,) Mr. Lowell held out the idea to Mr. Boott that he himself might advance the money, necessary to enable Mr. Boott to build this place in the country. I refer for this, to the statement of Mr. Lowell's witness, the coroner, who says, that Mr. Lowell, (amongst all the other things confidentially communicated to a coroner's jury,) mentioned, "that he, [Mr. Lowell.] had advised Mr. Boott to retire into the country, upon a sale of the mansion-house, and had offered to advance to him the means of building himself a place." [L. p. 12.]

This circumstance I never before heard of; but the other circumstances, above mentioned, are those, under which I declined to execute the deed; and what I said to Mr. Bowditch and to Mr. Darracott was, I believe, the whole length and breadth of my impeachment of Mr. Boott's credit in his trust, at any time before this controversy with Mr. Lowell, except to the extent stated, in the confidential family communications above alluded to, or in private conversations with Mr. Lowell himself, (who knew all that I did, and, it seems, a good deal more,) and like conversations with his counsel, and with my own counsel, after the question about a change of trustee had arisen. Indeed, the surprise of most readers at the statements of my former pamphlet,—notwithstanding the previous rumours, so commonly prevalent to my disadvantage, and the excitement caused by the manner of Mr. Boott's death, and the fact that a litigation had been for some time pending concerning the probate of his will,—must be a convincing proof to all candid persons, that I had not been very industrious in *circulating*, what Mr. Lowell is pleased to call, my defamations of Mr. Boott.

CHAPTER LVIII.

PROMPT AGENCY IN PREPARING FOR AND MAKING UP THE ACCOUNT.
MR. LOWELL'S RESPONSIBILITY FOR ITS SUBSTANTIAL TRUTH.

I ought, perhaps, here to mention, that, until after the death of Mr. Boott, Mr. Lowell and myself were on extremely good terms ; and though I soon perceived that we were acting in opposition, when we approached the question of a change of trusteeship, and that he had, for some reason, a point to carry, as well as I, I attributed that, at the time, to nothing but the ardour of his zeal and friendship for Mr. J. Wright Boott, whose cause he had espoused. The point, immediately in contest, I must do him the justice to say, he was never known to yield ; but he always agreed with me, in our private conversations, when there was no point to settle, and no by-stander to witness them, that, had the family property been differently managed, it would have been much larger than it was.

A particular proof of *some* of these conversations, at least, now stands in print ; for the letter of Mrs. Brooks to her mother, dated December 11, 1844, printed by me, contains this passage :—

“Mr. Brooks has, this week, had two long conversations with Mr. Lowell, who said he agreed entirely with Mr. Brooks in his views, and Mr. Lowell denied ever having said, or thought, that Mr. Boott had managed the estate well, or that he considered him a fit person to have the care of the property. Mr. Lowell then went on to say, ‘If you, Mr. Brooks, or I, or any good man of business, had had the care of that estate, what a noble property it would have been ! Mr. Boott should have been worth \$100,000 ; each heir should have had a handsome fortune, and Mrs. Boott, with more money to spend yearly than she ever has had, should have laid by \$50,000 to have bequeathed as she liked ; and that it was a sort of miracle that any thing was left.’” [B. App. p. 48.]

This, it will be remembered, is the letter, which,—in con-

sequence of Mrs. Brooks's request to her mother that she would "write to Mr. Lowell, and ask him as a man of honour, if it is not all true,"—was sent out from England by Mrs. Boott to Mr. Lowell. What answer Mr. Lowell made to that appeal, in his communications to Mrs. Boott, I do not know. But he received the letter, and neither by any communication *to me*, then or since, nor in his pamphlet, purporting to answer my former remarks, has he ever undertaken to *deny* a syllable of the contents of that letter, although one passage in it, alluding to the remarkable coincidence between the balance of Mr. Boott's probate account and the amount of his debt to Mr. Lowell, excited him, considerably, at the time, and brought him to me to complain of the fact that Mrs. Brooks should have so written. It is the same passage, which he affects to dismiss, in his pamphlet, under the denomination of a "choice extract." [L. p. 110.] The "Reply" alludes, in one or two other places, to the letter; but never for the purpose of disavowing any thing mentioned in it, as done or said by him. So that I have, now, in print, his own tacit admission of the truth of my foregoing statement, and I hold him so far pinned upon that point. Yet, avoiding all notice of these former conversations, the burden of the "Reply" is, that Mr. Boott was a "remarkably good manager of trust property!" [L. p. 97.]

But I return to narrative. The moment my conversations with Mr. Bowditch and with Mr. Darracott were reported to Mr. Lowell, he, manifestly, perceived danger and difficulty, which required prompt action. His first effort was to persuade, and even to talk of compelling, Mr. Darracott, as that gentleman told me, to accept a deed from Mr. Boott and Mrs. Boott alone. Failing in that, he saw, at once, that a change of trusteeship was inevitable, and that this would, necessarily, involve a settlement of an executor's account, or, at least, of something that might pass for one. Not a word, be it observed, had been said by me, or by any body, about *accounts* at this time. The bargain of sale was in April, 1844. [L. p. 196.] My conversation with Mr. Bowditch was immediately after, when he had first begun to look at the

title under the will of Mr. Boott, senior, and, from the tenor of that instrument, perceived the necessity of deeds of confirmation from the heirs. I had said nothing about requiring a settlement of accounts, though I said I could not sign the deed, if Mr. Boott was to be the trustee. Mr. William Boott's letter to his brother, calling for accounts, was not till June 3, 1844. [B. App. p. 39.] No such call was made by him before that time, nor by me at any time. It is true that Mr. William Boott had previously mentioned, in a private letter to Dr. Boott of London, dated March 31, 1844, according to an extract printed by Mr. Lowell, [L. p. 197.] that he entertained the idea of obtaining a settlement of accounts through the judge of probate. May 1, 1844, it seems, he wrote again, to say that this step would be unnecessary, because it was found that the heirs must sign a deed of the house, which he should not do until Mr. J. Wright Boott should have given up the trust. [L. p. 197.] It also appears, by a letter from Dr. Boott to Mr. William Boott, dated April 18, 1844, of which an extract was printed by me, [B. App. p. 36.] that Mrs. Boott, at that date, wrote to Mr. J. Wright Boott, "requiring him to settle his accounts." But all this private correspondence was, of course, unknown to Mr. Lowell at that time. It was equally so to me. Indeed Mrs. Boott's letter to Mr. J. Wright Boott, "requiring him to settle his accounts," could hardly have been received in this country when Mr. Lowell made the first movement, of which I am now about to speak.

That movement was *sending out drafts of releases*, to be executed in London by Mrs. Boott and Dr. Boott, *in anticipation of the accounts*, which Mr. Lowell must, then, have intended to prepare, and to get passed in the probate office; and that intention must have been formed in consequence of my conversations with Mr. Bowditch and Mr. Darracott,—nothing else, that I am aware of, having occurred here to suggest it. I state this as a fact, but the reader will understand that it is only my inference, which he will adopt, or not, as he pleases. The releases, he will find on inspection, are such as could not have been drawn by a foreign lawyer, unacquainted with

the domestic particulars they state. They were, manifestly, upon their face, drawn up here, in Boston, and they were executed in London, as their date declares, May 29, 1844. [B. App. pp. 37-39.] That is, they were executed, *there*, a few weeks, only, after my conversation with Mr. Bowditch *here*, and *several days before* Mr. William Boott's call on his brother for the accounts.

Besides, I spoke of this preparing of the releases, formerly, as the act of Mr. Lowell, [B. p. 95.] and he does not deny it. But I do not speak of it, now, as a thing in itself faulty,—on the contrary, it indicates an uncommonly quick perception of the nature of the task, which lay before him, and great promptitude in preparing for its execution. The task obviously was to present a plausible account, which would provide for his own debt, cover up the deficiencies of the executor, and suggest no superfluous inquiries, while it must be put in such form, that Mr. Boott would be likely to adopt it. The first preparation for this consisted in getting releases from parties, who could not, by possibility, know what the account would be, upon which their releases were to operate. For my part, I never heard of the releases until long after the account was settled; nor, in fact, until I found them on the records of the probate office, when I was preparing my former pamphlet; but, how, when, and why, they were prepared, has now become plain from all the circumstances.

Another more remarkable instance of the same commendable qualities I may mention here, by the way, in reference to a fact once before alluded to. Some two or three years before Mr. Lowell found any occasion to use them, that I know of, he had contrived to get into his hands, from the parties in London, the whole private family correspondence in their possession. This is scarcely an inference. For my correspondence with Mr. Lowell occurred in December, 1846, and Mr. Lowell tells us that the family letters, from which he makes so many extracts in his pamphlet, had, *at that time*, been in his possession nearly eighteen months; [L. p. 173.] which goes back to the summer of 1845, shortly after Mr. Boott's death. By that event, Mr. Lowell, as executor of

Mr. Boott, became the possessor of all Mr. Boott's papers, and of all the account books, if any existed, prior to those of Boott & Lowell. The latter were already in his hands as the liquidator of the business of that firm. Every vestige, that remained, of the accounts of the several firms, of which Mr. Boott had been a member, and of all his settlements with his partners, and of all his transactions concerning his father's estate, were, thus, in the sole custody of Mr. Lowell ; but he could not be content till he had got the whole family correspondence also ; and the confiding family seem to have, unhesitatingly, delivered this confidential budget into Mr. Lowell's keeping ! We shall presently see what use he makes of it.

Now this promptitude of action in *getting the releases*, needful to effect the settlement of a contemplated account, naturally leads us to look for equal promptitude in the *preparing of the account*, which the releases were designed to pass ;—and this opens questions of some importance to Mr. Lowell. Who made this account of 1844 ? When and how was it made ? And how came Mr. Boott to sign and present an account, so essentially defective, so extremely loose and general, and claiming, so unjustly and untruly, a cash balance of \$25,000 as due to himself ?

Mr. Lowell complains, with truth, that, in my former pamphlet, I spoke, as I have done throughout my present remarks, of this account as an account *made by him*. [L. p. 30.] I did so, in conformity with his own statement to the jury, according to the declaration of Dr. Palmer, [Ante, p. 77.] and in conformity with his own statement to me, and also in conformity with his several statements to Mr. William Boott, and to Mr. Franklin Dexter, at other times, as reported to me by those gentlemen. [B. p. 121.]

I stated further, upon the authority of those gentlemen, that Mr. Lowell, said that Mr. J. Wright Boott had *refused to sign* this account ; and, upon the authority of Mr. Dexter, that he refused to sign it, as Mr. Lowell said, *because it made him (Mr. Boott,) a creditor of the estate* ; and upon my own authority, I stated, that Mr. Lowell said to me, not only that

Mr. Boott had so refused and for that reason, but that he persisted in his refusal for nearly six months. [B. p. 121.]

But, while I attributed to Mr. Lowell the drawing up of the account, as it stands, and the overcoming of Mr. Boott's first reluctance to its adoption, I did not impute to him any considerable blame for having framed the account, as it was framed, either in form or in substance; nor even for having induced Mr. Boott to adopt it. In my then state of information on the subject, I confined my complaint of Mr. Lowell, respecting the account, almost entirely, to the *use* he had made of it. This will appear by the following extracts:—

“It will, of course, be understood, that the foregoing statements, concerning the accounts and the mode of their adjustment, are not made from any desire to undo what has been done, nor with reference to any pecuniary interests involved affecting myself. Well knowing, substantially, the true state of the case, I freely released, Mrs. Brooks consenting, all our claims on the executor in 1833, and we released them over again in 1844. There is no pecuniary interest, therefore, in the question. But in the next place, I desire to have it understood, that I make no great complaint of Mr. Lowell for the manner, in which the principal account is stated. He had no materials, from which he could easily have made a better one.” [B. p. 123.]

I then went on to state the paucity of materials, which I then supposed to exist, and the supposed reasons for drawing up the account in that form, so as “to give an appearance of reality, sufficient for a plausible statement to stand on the records of the probate office,” and I proceeded as follows:—

“Nor do I think it greatly objectionable, that the account should have been (though unnecessarily,) so stated as to present the aspect of a cash advance, by the executor, of \$25,000 beyond his receipts, considering that the stock held by Mr. Lowell as a security for the money due to him, stood of record, since 1831, as a conveyance by Mr. Wright Boott, in the capacity of executor, to Mr. Lowell, acting in the capacity of trustee for somebody, and that this form of statement went to shield his friend and former partner, in whom he felt a strong interest, and for whom he was acting in this business, from ostensible misconduct in his trust, apparent on the public records.

“But that of which I do complain, and which I confess myself astonished at, knowing as I do what facts were known to Mr. Lowell, aside from mere figures, is the *use*, which he has thought proper to make of this account, in vindication of his friend, *at the expense of*

myself and others, whom he charges with misconduct, on the basis of this same account, as if it were a real exposition of Mr. Wright Boott's good management of the estate, and proof of the injustice and unreasonableness of those, who thought he had mismanaged it, and was unfit for a trustee." [B. p. 124.]

It never had occurred to me, at the time of the writing of the foregoing passages, that Mr. Lowell would pretend to take the ground, which is taken in his "Reply;" namely, that this account, instead of standing on the release of 1833 as a transaction, which superseded and extinguished all prior accountability, was intended to be, and is, a literal and full account of the whole executorship from the beginning, waiving the effect of all previous voluntary releases. [L. p. 31.] This allegation, coupled with the facts, since discovered, concerning the extensive stock transactions of the executor, and his use of the estate's funds, during the period of the house of Boott & Lowell, and the direct agency of that house in some, at least, of those operations, places this whole branch of the controversy on a new footing ; and it becomes highly material, now, to understand upon what footing, precisely, Mr. Lowell really means to rest this part of his case.

In one place, we are told :—

"*I* [Mr. Lowell] made up the accounts from the data, he [Mr. Boott] furnished." [L. p. 31.]

In another :—

"It will also be observed that all that portion of the accounts, which involves, by necessary implication, the profit and loss of either of the firms of Kirk Boott & Sons, was stated on Mr. Boott's personal knowledge and responsibility." [L. p. 36.]

Elsewhere it is said, in reference to "the partnerships of Kirk Boott & Sons," that the "final liquidation of the whole business was detailed in the books of Boott & Lowell," and that Mr. Boott "was therefore enabled to render full justice to every one but himself." [L. p. 59.]

The same idea is conveyed in another passage, which avers :—

"The residual capital, *collected and accounted for by Boott & Lowell*, was the *true measure* of the sum realized from his father's estate, beyond the amount of the trust funds, the real estate, and the specific legacies." [L. p. 45.]

And again, we have this account of the matter :—

"When Mr. Boott was called upon by his brother William, in June, 1844, to settle his accounts at the probate office, *he applied to me for that portion of them which related to the time when he had been my partner, which I furnished to him.* Subsequently, he brought me *all the papers* which he had collected relating to his accounts, *that I might put them in form for him.* This was the whole extent of my agency in the matter. I do not know upon what authority Mr. Brooks undertakes to attribute to me any further responsibility than that of having aided Mr. Boott to the extent above specified. *I made up the account certainly;* but it was from the *materials furnished to me, and on the principles indicated by Mr. Boott himself.*" [L. p. 30.]

It is thus admitted, unequivocally, that Mr. Lowell "*made up the account;*" but, it is said, "*from the materials furnished,*" "*and on the principles indicated, by Mr. Boott himself;*" and there is a distinct disclaimer of all "*personal knowledge and responsibility*" of Mr. Lowell, concerning "*all that portion of the accounts, which involves, by necessary implication, the profit and loss of either of the firms of Kirk Boott & Sons;*" and yet, it is said, referring to *both* of those firms, "*the final liquidation of the whole business was detailed in the books of Boott & Lowell;*" and that Mr. Boott "*was therefore enabled to render full justice to every one but himself;*" and that the residual capital collected by Boott & Lowell, "*was the true measure of the sum realized from his father's estate, beyond the amount of the trust funds, the real estate, and the specific legacies;*" and although Mr. Boott, it is also said, "*brought me [Mr. Lowell] all the papers,*" it appears that he, (Mr. Boott,) had first "*applied to me, [Mr. Lowell] for that portion of them, [the accounts] which related to the time when he had been my partner,—which I furnished to him.*"

Now the reader must understand, from all this, what he can. I would carefully avoid the smallest injustice to an opponent, whose language I quote. But, according to my un-

derstanding of it, Mr. Lowell means to say this:—1. Whatever the books of Boott & Lowell contain, relating to the subject matter of this account, that much I, [Mr. Lowell] extracted from those books, and furnished to Mr. Boott. 2. Mr. Boott, afterwards, handed to me [Mr. Lowell,] “all the papers, which he had collected relating to his accounts,”—including, of course, the memoranda, which Mr. Lowell had furnished to him. 3. The books of Boott & Lowell detailed the final liquidation of the whole business of the two preceding firms, and, consequently, showed all that Mr. Boott had *received* from those firms, belonging to his *father's estate*, although they did not show all, that he had paid to the heirs; so that, by means of my [Mr. Lowell's] statement from the books of Boott & Lowell, Mr. Boott was “enabled to render full justice to every one but himself,”—the residual capital, collected by Boott & Lowell, being “the true measure of the sum realized from his father's estate, beyond the trust funds,” &c. 4. From these materials, (which Mr. Boott, it seems, could make nothing out of, satisfactory to himself,) I [Mr. Lowell] drew up the account, in its present form, as a full and true account of the whole executorship.

Am I not right, in this interpretation of the effect of Mr. Lowell's language, in the several passages above collected?

If I am, let us look at this account, [L. pp. 38, 39.—B. App. pp. 43, 44.] and consider, what could have been the papers and materials *furnished by Mr. Boott*, besides those extracts or memoranda, from the books of Boott & Lowell, which *Mr. Lowell* had previously *furnished to him*.

The account debits the executor with the amount of the inventory, and with the foot of the probate account of 1818. Probate copies of those papers are the only possible materials for those entries.

On the credit side, all the items of the account, except two, consist of specific articles in the inventory,—which were only to be delivered over, specifically, to the persons entitled to them,—and of probate fees, which are usually endorsed upon the copies from the probate office. The “materials,” then, thus far, were only the usual office copies of former probate papers. They contained no *new* subject of account.

Next comes the great debit, and the great corresponding credit of \$274,686 36, for income received on the trust fund, and paid over "to, or for account and by order of, the widow." Now there is no pretence that Mr. Boott ever took receipts from his mother, or had any accounts settled with her. Let Mr. Lowell produce one if he can. On the contrary, he does not pretend to deny my former assertion, that this item, on the credit side, rests for its voucher, entirely, on the general release, obtained from Mrs. Boott before the account was made up, and obtained in a form suitable to pass whatever allowances the account might claim. There was no other paper relative to this *credit*, which Mr. Boott could have produced.

On the *debit* side, how was this large item made up? Was it not a mere computation? The stocks, composing the account of 1818, and the stocks, afterwards bought, and treated in the account of 1844 as the executor's, told, very nearly, their own story. The books of the firms preceding that of Boott & Lowell, it is said, were destroyed. Any other accounts, kept by Mr. Boott, are not pretended. If there were any, let them come forth. But, except for income on the stocks of 1818, received before the existence of the house of Boott & Lowell, *their* books, and Mr. Lowell's own books, would show, during the whole period of the account, either the income actually received, or the rate of dividend, by which it might be estimated; and the earlier income, from 1818 to 1822, was, from the nature of the stocks, not difficult to approximate, very nearly, as I think I have already shown. [Ante, p. 436-439.] I can not believe that there was one scrap of material, except the release, furnished by Mr. Boott, towards this great item on either side of the account. It was all, I suspect, mere estimate and computation. If not, let Mr. Lowell produce whatever there is to show for it.

On the credit side, what remains? One item only,—the \$90,000, said to have been paid to the heirs. For that, and more, as an aggregate result, including settlements of Mr. Boott with his different partners, there may have been some

receipts or other papers, proving more or less of payment. And these, I submit to the reader, are *all* "the materials," which Mr. Boott is likely to have furnished, on which *any single entry* in this account is founded, unless it were title deeds and certificates of stock, as evidences of the property, admitted to be on hand; and most of these must have been held by Mr. Lowell, the property being under pledge to him. If there was any thing else, let Mr. Lowell show it.

To return, then, to the debit side of the account. Except the results of the old probate papers, and the mere computation of the aggregate amount of income received, there is not an item stated on that side of the account, which did not come out of the books of Boott & Lowell, though no one is specified as derived from that source, except the large sum of \$69,389 99, said to have been received by the executor, "in liquidation of the outstanding property of Kirk Boott & Sons." And the items, coming from those books, are, let it be noted, with the credit of \$90,000 paid to the heirs, the *whole material portion of the account, in which the heirs were directly concerned*.

The income on the trust fund was nothing to them, except as they were interested to see justice done to their mother. The debit of the inventory, and the credits for its contents, specifically delivered, were mere matters of form. The \$116,783 95, drawn from the old probate account of 1818, was only re-stating that, which the executor had formerly charged himself with. There is *no new subject of account with the heirs* brought in, *except the entries derived from the books of Boott & Lowell*; and those items of the account, which are derived from those books, purport to represent, as Mr. Lowell admits, [L. p. 45.] *the whole estate* of Mr. Boott, senior, except that portion of it, which had been originally invested for the trust fund, according to the probate account of 1818, and the specific property, real estate included, named in the inventory of that year. In relation to the whole *essence* of this account of 1844, except alleged payments to the heirs, Mr. Lowell, it seems, was, virtually, as much an accounting party as Mr. Boott. Yet, the "Reply" puts it to

the reader, as if Mr. Lowell, knowing nothing, himself, of the more important matters in this account, had merely thrown together certain materials furnished to him by Mr. Boott, of which certain memoranda of entries, previously found by Mr. Lowell in the books of Boott & Lowell, had constituted a small part!

The "Reply" professes entire ignorance, or, at least, not sufficient acquaintance to speak with confidence, "of the result of the liquidation of the outstanding business of the first firm"; [L. p. 27.] and, yet it says, (referring expressly, to *both* the former firms,—"the *partnerships* of Kirk Boott & Sons,") that "the final liquidation of the whole business was detailed in the books of Boott & Lowell." [L. p. 59.] "All that portion of the account, which involves, by necessary implication, the *profit and loss* of either of the firms of Kirk Boott & Sons," we are told, "was stated on Mr. Boott's personal knowledge and responsibility;" [L. p. 36.] and, yet, it appears that there is *no* portion of this account, which does involve their profit and loss, by necessary implication or otherwise, except that portion of it, which is comprised in the entry of the large sum received from Boott & Lowell; for, all else in the account, representing original capital, is only the inventory of real estate and specific chattels, and the amount of the particular trust funds, which the will directed to be withdrawn from the house of Kirk Boott & Sons, *before* its liquidation began, and *without regard to its profit and loss.* [See Will and Codicil, B. App. pp. 5-9.]

Now, Mr. Lowell, possessing the books of Boott & Lowell, and being the virtual accounting party for that house, was surely bound to have stated, in this account, every thing, affecting the interest of the estate, which those books can disclose. Whatever came from the executor to Boott & Lowell, and whatever the executor did with the estate's funds through Boott & Lowell, Mr. Lowell, as a party to those transactions, was peculiarly bound to exhibit, in a distinct and intelligible form. Further than that, whatever account of Mr. Boott, individually, was kept by the house in its books, either with the estate or with the heirs, or of Mr.

Boott's own personal transactions with funds of the estate, the duty was, at least, as much upon Mr. Lowell, when he undertook to make up the executor's account, as it was upon Mr. Boott, to exhibit, truly and faithfully, the items therein entered, since he was the copartner of Mr. Boott, and the books of the copartnership were in his keeping. And when, instead of drawing off the items, he undertakes to state, as he does, only general results, *he takes upon himself*, (I submit to the reader,) *the whole responsibility of the truth and completeness of the account*, so far as it is, or might be, derived from those books, and can not now be allowed to shift off that responsibility upon a friend in his grave.

But, when we come to look at other evidence than the account itself, we see, that the two and a half years of Boott & Lowell, comprise the most active portion of Mr. Boott's dealings with the stocks, admitted to have formed the original trust fund of 1818, and also, with the stocks, finally treated as representing, in 1844, the trust fund in part, and, as we are told, Mr. Boott's own property, in part, and the property of his wards, in part. His two subscriptions to fifty-six shares and to forty shares of Merrimack stock, ostensibly for himself, but out of which come the seventy-one shares of the account of 1844, fall within that period. His purchase and sale of Mr. Dehon's estate, ostensibly for himself, leaving the stable on hand at \$2500, charged to the estate by the account of 1844, fall within the same period. So do his sales of the old stocks of the trust fund of 1818, to the amount of \$52,000 and upwards ; and those sales were made, as it turns out, either *by the executor to Boott & Lowell*, or else, if transferred to Boott & Lowell, as agents for the executor, the sales were made *by Mr. Lowell himself*, while Mr. Boott was absent in England. Yet, of all these matters, not one word is disclosed in this account,—except the bare fact, that, at some time, left to be guessed at, between 1818 and 1844, certain gains and certain losses resulted from certain sales by the executor of the stocks on hand in 1818 !

Why were these omissions ? And what does Mr. Lowell mean, by saying that putting the accounts *in form* for Mr.

Boott, upon "materials furnished," and according to "principles indicated" by Mr. Boott, was the *whole extent of his agency* in the matter? [L. p. 30.] And what, by the way, were "all the documents," which, he says, he offered to show to Judge Warren? [L. p. 35.]

CHAPTER LIX.

MR. BOOTT'S UNWILLINGNESS TO ADOPT THE ACCOUNT, DRAWN UP
BY MR. LOWELL.

The "Reply" informs us, that Mr. Boott affirmed, "that he had paid to each of the heirs *more* than the \$10,000 charged to them, but that he was determined to bring in an account that could not be disputed." [L. p. 31.] Nor is it disputed that \$90,000, in the whole, (as the account claims,) and *more*, had been paid among the heirs. The whole question is on the other side of the account,—how much had been received?—and it is remarkable, that Mr. Lowell does not pretend, that Mr. Boott made *any* statement to him, whatever, on that point. It is merely said, that,—"He, [Mr. Boott] never expressed any doubt of being able to show, that he had never received from the estate more than he had credited in the account." [L. p. 31.] But did any body directly ask him? Mr. Lowell made out the account; and all that part of it, which relates to the *amount received*, beyond what Mr. Boott had formerly charged himself with, by the account of 1818, as derived from the old firm of Kirk Boott & Sons, *was furnished by Mr. Lowell out of the books of Boott & Lowell*. If he expressed no doubt on this point, why should Mr. Boott? Must not Mr. Boott, himself, have gone for information to these same books, if they contain, as Mr. Lowell

says they do, “the final liquidation of the whole business” of the former firms?

We are further told, that when the papers were first brought to Mr. Lowell, he asked Mr. Boott, why he did not commence his accounts from the date of the discharge; and the answer was:—“No, Mr. Lowell, I am determined to begin from the beginning, and show that the estate has not been wasted in my hands.” [L. p. 31.] Such, then, was the exact tenor of the commission from Mr. Boott, upon which Mr. Lowell undertook to draw up the account. He was to state an account, from the beginning, that would show that the estate had not been wasted in Mr. Boott’s hands. This he accomplishes in the manner we have seen, and submits it to Mr. Boott, without any inquiry, so far as appears, upon a most important point; namely, whether Mr. Boott had received any thing for the estate, in the interval of nearly four years, between May, 1818, when his former probate account was passed, and January 1, 1822, when the partnership of Boott & Lowell began? According to the account of 1844, the whole remaining money, therein included, after that, which had been already shown by the account of 1818, came from Boott & Lowell. And all, the “Reply” has to say upon this subject, is, that Mr. Boott,—not being asked,—“never *expressed* any doubt” that he was charged with all his receipts. “The result,” according to the “Reply,” “was the one exhibited at the probate office, showing a balance in his [Mr. Boott’s] favor, *for advances*, of \$3700.” [L. p. 31.] But the paper showed no such thing, to any common observation. What it showed, upon its face, was,—“*cash balance, due to the executor, \$25,215 45.*”

“This,” says Mr. Lowell, “did not surprize me.” [L. p. 31.] Of course, not. Why should it? Did not he make the account? But he adds, “it appeared to be what Mr. Boott expected.” [L. p. 31.] Indeed! How did that appear? Did he not refuse to sign it? I assert, on the authority of Mr. Lowell’s statement, to me, that, “*for nearly six months, he positively refused to sign that, or any other account, which represented himself to be a creditor of the estate.*” [B. p. 121.]

I assert, further, on the authority of Mr. William Boott, and of Mr. Franklin Dexter, that Mr. Lowell made the same declaration to each of those gentlemen, except as to the *length of time*, during which the refusal continued, and except that I believe he did not state the *reason* of the refusal to Mr. William Boott, as he did to Mr. Dexter, and to me. But what says Mr. Lowell? He says, very truly, that I charge him with having induced Mr. Boott, reluctantly, to adopt the account, and he then proceeds thus:—

“Now, so far is this from being true, that Mr. Boott never for one moment refused to sign the accounts, or expressed any doubt of his being entitled to the balance they exhibited. He did, however, intimate an intention of refusing to accept it. This occurred at an interview at Mr. Loring’s house a few days before the account was presented.” [L. pp. 32, 33.]

He means, of course, a few days before it was presented *at the probate office*; and a letter from Mr. Charles G. Loring is cited, which says:—

“Mr. Boott expressed his firm conviction, that, if he had charged all, that had been expended for the heirs, and could exhibit a detailed statement of his appropriations of the property in his hands, a larger balance would be found due to him; but he seemed disposed to relinquish any claim for that exhibited, under the pressure of the circumstances, in which he was placed by his inability to render detailed accounts, and the imputations made upon him, of abuse of his trust.” [L. p. 33.]

Such was the aspect of the case, as presented to Mr. Loring by his clients. No wonder that, upon such a case, Mr. Loring should have “designated the course, he [Mr. Boott] proposed as Quixotic.” [L. p. 33.] Here was an account, drawn up by Mr. Lowell, in whom Mr. Loring naturally placed the utmost confidence, both as an accurate accountant, and as a disinterested friend of all parties, purporting to exhibit a cash balance of \$25,000 due to the executor. And here is Mr. Boott, whom Mr. Loring considered to be a perfectly sane man, (though, in this instance, a little “Quixotic,”) and a gentleman, on whose assertions the utmost confidence might be placed, telling him, that, if he had charged *all* he had expended for the heirs, and could exhibit *detailed* state-

ments, a *larger* balance would be found due to him, and yet *proposing to relinquish, voluntarily,* (nobody having asked or suggested it, or having made any objection whatever to the account,—for nobody, but those three persons, had then ever seen it,) a clear balance, which is found due to him, according to that account, of \$25,000 !

And for what reasons ? They are two. First, because he could not exhibit certain *details*, which would show a *larger* balance due to him ; and, secondly, because the persons, in whose favour the balance shown was to be relinquished, were *falsely* imputing to him an *abuse of his trust !* What a miserable appearance does this make, after what we have seen about the reality of affairs behind this account, and after all Mr. Lowell's high flown figures about Mr. Boott's tendering the issue, throwing down the gauntlet, defying his assailants to the proof, [L. p. 206.] &c., &c., &c.! Especially, how poor does it appear, when we find that all the most important period of the account lies within the range of the books of Boott & Lowell, and that there was no manner of difficulty in exhibiting the minutest details of that interesting period! I should be sorry, indeed, if I believed, as Mr. Loring does, and as Mr. Lowell, also, professes to believe, that Mr. Boott was *not insane*, at the time of that conversation, upon all topics connected with his administration of the family property, and his accountability to some of the heirs of his father's estate.

We are, also, furnished with a letter from another gentleman, Mr. E. G. Loring, the present Judge of Probate, to the effect, that he was informed by Mr. Lowell, that, "when the balance, shown" by this account, "was communicated to Mr. Boott, he replied, that he *always had known the estate was in debt to him, but that he did not wish to stand urging demands, as a creditor, against his brothers and sisters.*" [L. p. 34.] Now this, it will be observed, is only another statement by *Mr. Lowell*, coming through Judge Loring. That gentleman only repeats what Mr. Lowell told him. Yet the account, as *now expounded* by Mr. Lowell does not purport to *urge the balance*, which it shows, *as a demand*

against the brothers and sisters, but merely, as the “Reply” assures us, to *reclaim* so much of Mr. Boott’s own *private property*, which had become mingled with property of the estate, in consequence of an agreement with me! [L. p. 41.] I leave it to Mr. Lowell to determine whether Mr. Boott’s misapprehension on that point, as formerly reported by himself to Judge Loring, tends to prove sanity or insanity.

But what is it, which Mr. Lowell now means to say is not true?—that Mr. Boott *refused to sign* the account? or that Mr. Lowell *said* he so refused? For these are two different questions. If Mr. Lowell means to assert, now, that he, Mr. Lowell, did not state, that Mr. Boott had refused to sign the account, he places himself in the unfortunate position of contradicting *two* gentlemen, *besides myself*, who positively affirm that he did so state. If Mr. William Boott’s testimony may be suspected of any undue bias from personal feeling, I may, at least safely refer to Mr. Franklin Dexter, who has not the remotest connexion with this controversy, and never had, except that he once called, as a friend, at my request, on Mr. Lowell for a purpose, which will be explained in its place, and that he afterwards acted, for a short time, as my counsel. But this was in 1845; and I now exhibit the following part of a letter, dated March 15, 1848, the whole of which I shall print in another connexion:—

EXTRACT FROM A LETTER OF MR. DEXTER.

“Mr. Lowell certainly stated to me, in that interview, that Mr. J. W. Boott, when the account made up by Mr. Lowell was *first presented to him*, said, that *he would never sign an account that brought his brothers and sisters in debt to him*. It was not that he would not *accept the balance*, but that he would not *sign the account*,—and I so reported to you.”

Mr. William Boott says, that Mr. Lowell said very nearly the same thing to him. I say, he said the same thing to me, with a material addition respecting the long continuance of the refusal.

Now if Mr. Lowell means to give a direct contradiction to all this, so be it. If not, why he then only places himself in

the very awkward predicament of asserting, now, a thing not to be true, which he himself, in at least three several conversations, with three several gentlemen, had before asserted was true. I leave him the choice.

But, when Mr. Charles G. Loring is cited as a witness, that Mr. Boott only intimated a willingness to *relinquish the balance*, it will be perceived that the *time* referred to by Mr. Loring, and the time referred to by Mr. Lowell, in his statements to Mr. Dexter, to Mr. William Boott, and to me, are *not the same*. Mr. Dexter says, the occasion mentioned by Mr. Lowell, when Mr. Boott refused to sign the account, was, "when the account, made up by Mr. Lowell, was *first presented to him*." On the other hand, the occasion, spoken of by Mr. Loring, was an interview with Mr. Boott and Mr. Lowell, when they called upon him, together, to consult him respecting the account. Mr. Lowell had presented the account to *Mr. Boott* before *that* time, of course. And, Mr. Lowell says, this interview with Mr. Loring was only "a few days before the accounts were presented," meaning *in the probate court*. [L. p. 33.]

Now the assertion, which I make upon my own credit, is, that Mr. Lowell told me, that Mr. Boott not only refused to sign the account, but *persisted in refusing for nearly six months*. This Mr. Lowell wishes the reader to infer must be a mistake of mine, because Mr. C. G. Loring writes, in answer to Mr. William Boott's letter of November 7, 1844, (the account is *dated* November 18,) "The accounts of your brother *have not yet been made up*, though, I *believe* the *materials* are, now, *all at hand*." [L. p. 32.] But what did Mr. Loring know of these facts? What could his statement be more than a repetition of that, which Mr. Lowell may have given him to understand? While Mr. Boott was refusing to adopt the proposed draft of an account, Mr. Lowell, when inquired of, might, very naturally, have said that he was not quite ready, yet, to present an account, but that the materials for it were all at hand; and, upon that information, Mr. Loring would, naturally, have written as he did. As to the "materials," we have seen that they were *always* at

hand. They lay in the old probate papers, a few receipts from some of the heirs, the books of Boott & Lowell, Mr. Lowell's own books, and the releases obtained from London, which, being dated May 29, must have been received here by the steamer about the middle of June.

In this connexion, I pray the reader to note, that, although Mr. Lowell cites this letter of Mr. Loring, and leaves the reader to his inference, he does not undertake, directly, to deny his having stated to me, as I affirmed in my former pamphlet, that Mr. Boott refused *for nearly six months* to sign the account. On the contrary, he only asks,—“Did I say, then, that he refused to sign the accounts, *because they were untrue?* Or is this the poison, to which an incident, so honorable to Mr. Boott, is turned by passing through the alembic of Mr. Brooks's mind?” [L. p. 34.]

Certainly, Mr. Lowell did not *say* any such thing as that Mr. Boott refused to sign them *because they were untrue*;—he only stated the fact, that Mr. Boott *did refuse to sign them*, and that he persisted in so refusing for nearly six months. Mr. Lowell was, at that time, declaiming to me, with great warmth and earnestness, upon the disinterestedness of Mr. Boott's character and conduct, for which this fact was used as an argument,—and so I formerly reported Mr. Lowell. [B. p. 121.] The statement was made to prove one thing. It may, nevertheless, prove another;—and, all I supposed it to prove, was the truth of the fact, which Mr. Lowell stated, to satisfy me of the disinterestedness of Mr. Boott.

I supposed so, at the time of writing my pamphlet, not only because Mr. Lowell had so said, but because other facts confirmed it. I had *then* found that Mr. Lowell, as early as May, 1844, was *getting releases, preparatory to an account*. There was no want of promptitude on his part, at that stage of the business. Early in June, before the releases of May 29 could have arrived, Mr. William Boott wrote to his brother, requesting, for the first time, an account of the executorship, and was immediately answered, through Mr. Charles G. Loring, as follows:—

LETTER—C. G. LORING to W. BOOTT.

“39 COURT STREET, 5th JUNE, 1844.

To W. Boott, Esq.

DEAR SIR,—Mr. John W. Boott has placed in my hands your note to him of 3d instant, with a request that I would reply to it; and I have the pleasure to say, that Mr. Boott is *making arrangements* for rendering, at the probate office, the returns to which you refer, and that *no avoidable delay will take place*. Yours, respectfully,

C. G. LORING.”

Now the “arrangements,” (except the releases from London,) for making up and rendering *such an account as this is*,—IF MR. BOOTT AGREED TO IT,—did not require a week. How is it possible, that it should have occupied Mr. Boott and Mr. Lowell, from the fifth of June till the eighteenth of the following November?

Another curious incident happens to fall within this period. Mr. Boott executed a will on the ninth of September; and that will, after some bequests of pictures, guns, plants and other specific articles, of which “all my plants and gardening apparatus and botanical books” were given to Mr. Lowell, proceeds thus:—

“I further give, devise and bequeath to John A. Lowell, Esq., his heirs, executors, or assigns for ever, *all my interest in reversion in and of certain real and personal property, held in trust under the provisions of the will of my late father, and all the interest in reversion in certain real and personal property, held in trust under the provisions of the will of my late father, which was conveyed to me by William Lyman and Mary his wife, and all the interest in reversion in certain real and personal property held in trust under the provisions of the will of my late father, which was conveyed to me by Robert Ralston and Ann, his wife, in trust; first, to pay and discharge a debt of twenty-five thousand dollars, which I owe to him;*” [B. App. pp. 41, 42.]

Now, if Mr. Boott considered himself, at that time, entitled, in his own right, to \$25,000 of manufacturing stock,—as he was according to Mr. Lowell’s present exposition of the account,—or if Mr. Boott knew that his father’s estate owed him even more than the balance of the account in question,—as he did according to the statement of the interview at

Mr. Charles G. Loring's,—how did it happen, that, only two months before the account was filed, he should have made a will, *the first object* of which appears to have been to *secure the payment of his debt to Mr. Lowell*, out of so distant a source as *these reversions*?

Perhaps, it may be said, this proves that the account could not *then* have been made up. But, will Mr. Lowell say, that, *until* the account was made up, Mr. Boott, being a sane man, possessed of "a most accurate memory and a clear perception of his own rights and obligations to others," [L. p. 30.] did not know, or remember, so prominent a fact as this, in his own private affairs? Could he be ignorant, *if it were a fact*, that a balance of \$25,000, or more, was standing to his credit, in his accounts with his father's estate; and that he was himself the true owner of that amount of property, invested in excellent manufacturing stock, though it stood covered, by accident, under the *name* of J. Wright Boott, *executor*? Did he not know that he had a right to apply this, *immediately*, to the payment of Mr. Lowell?

What, then, was the cause of the making of *such* a will? Why, according to Mr. Lowell, "the reason was probably this":—

"It had come to his [Mr. Boott's] knowledge, that Mr. Brooks had so far forgotten himself as *publicly to assert*, that *I had no legal claim to that debt, on the ground of the form in which it stood secured*.—a form existing solely in virtue of his own interposition, in May, 1831." [L. p. 204.]

That, which Mr. Lowell considers *my public assertion*, he goes on to show was a *private letter* from Mrs. Brooks to *her brother*, Dr. Francis Boott, dated July 15, 1844, in which she says:—

"The debt to Mr. Lowell is, or was, three weeks ago, still unpaid, and fifty shares of the Merrimack Company are still pledged to Mr. Lowell as security, while, in fact, Mr. Lowell can not *legally* recover one cent. Edward has *never till lately* mentioned these circumstances to *any one*, and had no disposition to make any trouble on that account, if the rest of the heirs were satisfied." [L. p. 204.]

What evidence there is of *public assertion* in this, I am

unable to see. It was a confidential communication to one of the family, who had a right and interest to know it, and refers to no other than like confidential communications made by me here. Nor do I understand why Mr. Lowell should speak of the objection to the legality of his claim as depending upon the *form*, in which it was secured. The ground of objection was, that the debt was Mr. Boott's, and the shares pledged for it the estate's; and that Mr. Lowell knew this, when he last took the security, if not when he first made the loan. Is that a *form*?

However, it seems that Mr. James Boott,—with a want of discretion, which, I am very confident, he would never have been guilty of, but for Mr. Lowell's assurances to all parties in London, that Mr. J. Wright Boott was perfectly sane,—sent this letter out to *him*; and, Mr. Boott, thereupon, expressed to Mr. Lowell “his indignation, at what he was pleased to designate as the unparalleled baseness of these intimations.” [L. p. 205.]

This language of a man entirely deranged, at that time, on the subject of his family relations, as the reader will see, when I lay before him the evidence in that part of the case, Mr. Lowell is but too happy to adopt, while he attributes the making of the will to this just indignation of Mr. Boott. But, suppose Mr. Lowell right in that view, what is it to our present purpose? *The account* does not purport, upon its face, to involve, in the smallest degree, the question, whether Mr. Lowell had a legal lien on those stocks or not. It asserts no such lien, but the reverse, and proceeds upon the ground, as Mr. Lowell assures us, [L. p. 41.] that an interest of \$25,000 in them was *Mr. Boott's private property*. The “Reply” insists,—not only that such was the fact, but,—that Mr. Boott was well warranted, for that reason, in appropriating, for years, the income from one sixth of the stocks to the payment of his own debts; [L. p. 92.] and, by the terms of the settlement agreed on, the estate is made in effect, to *buy out that interest* of Mr. Boott, and to pay for it, as a reality, with the proceeds of the mansion-house. [Ante, p. 160.]

I repeat my question, then :—How came Mr. Boott to provide for his debt to Mr. Lowell out of a mere distant expectancy in reversion, if he really had such a present interest in these stocks as the “Reply” now asserts, or had a claim, which he himself recognized, of \$25,000, presently due to him from the estate, as the account pretends?

The inference, I venture to draw, is, that what Mr. Lowell formerly stated was true, and that what he now states is not true. I infer, in conformity with his statement to me, and in conformity, also, with his several statements to Mr. William Boott and to Mr. Dexter, that Mr. J. Wright Boott *refused to admit any such right, interest, or claim*, as Mr. Lowell’s proposed account had set up for him ; and, fearing also, in consequence of the letter above mentioned, sent to him by Mr. James Boott, that Mr. Lowell might not be able to *Maintain his asserted lien* upon the stocks, and that the heirs *might not assent* to the payment of his private debt out of the *estate’s property*, he resorted, probably under legal advice, to the mode pointed out in this will to secure Mr. Lowell’s *eventual payment* ; at any rate, by making Mr. Lowell the legatee, in trust for that declared purpose, of his reversionary interests to accrue at the decease of Mrs. Boott ; and, he did so, *merely because he well knew that he had nothing else, besides these reversions, adequate to pay, or secure, so large a debt.*

By what arguments, Mr. J. Wright Boott was finally brought round to adopt the account as it stood, we shall, probably, never know. But, that he refused, at first, to do so, can not be doubted, if either myself, or Mr. William Boott, or Mr. Franklin Dexter, is believed,—provided, always, that Mr. Lowell formerly spoke truth to us. And, under the same proviso, if I am believed, Mr. Boott persisted in that refusal for nearly six months. My inference, therefore, is, that the account was, in fact, prepared by Mr. Lowell, substantially as it now is, in May or June, 1844 ; and, that it was not presented in the probate court, nor submitted to Mr. Loring, until November, *only because Mr. Boott*

would not consent to adopt it. And in my belief, as formerly stated, he *never* would have consented to sign that account, had he, in truth, been, as Mr. Lowell argues, in a state of perfect sanity.

Another reason for believing that the account was made up and presented to *Mr. Boott* in May or June,—notwithstanding Mr. Loring's belief that it was not made up on the seventh of November, though “the materials” were then “all at hand,”—is the following statement of Mr. Lowell, made soon after the *fifth of June*, as set forth in my former pamphlet, and not denied in the “Reply:”—

“But soon after Mr. William Boott's note [of June 5,] had been sent, he was told by Mr. Lowell, that Mr. Wright Boott was *previously* preparing the accounts, in consequence of *a suggestion from himself*, that the state of feeling in the family would make it necessary for him to settle them.” [B. p. 95.]

Now, we have already seen, that Mr. J. Wright Boott prepared no account, except through Mr. Lowell's agency. The inference, therefore, from the foregoing statement, is, that *Mr Lowell* had been “*previously preparing the accounts,*” and that Mr Boott was, in truth, only considering whether he would or would not adopt them.

The account was, however, signed, and presented *at the probate office*, five or six months later, namely, at or soon after its *date*, [November 18,] and Mr. Lowell, as the agent of Mr. Boott, was thereupon referred by me to Judge Warren, as counsel for Mrs. Brooks, and for myself as an heir in her right, and for Mr. William Boott. The negotiation and compromise followed, which are described in the letter of Judge Warren already printed,—[Ante. p. 139.] a compromise, whereby all objections on our part to the account were waived, without proof or inquiry respecting its contents, deeds conveying the mansion-house were executed, and releases made of all our claims on Mr. Boott, he resigning his trust into the hands of Mr. C. G. Loring, and passing over to him all the property left, after taking out from the proceeds of the mansion-house, the alleged cash balance of the account.

This brings me to the proper point for considering Mr. Lowell's explanation of another ground of complaint, I have against him, relative to the account, which is, that, in order to facilitate the passage of the account, he made *an unwarranted use of my name*, by *signing* it for me, without my knowledge, to a formal release of Mr. J. Wright Boott, *in my capacity of trustee*, jointly with Mr. Lowell, under the will of the late Mr. Kirk Boott.

CHAPTER LX.

MR. LOWELL'S UNWARRANTED USE OF MY NAME AS TRUSTEE, TO PASS AN ACCOUNT.

To make this matter perfectly clear, the reader must attend to dates, as well as to the course of events.

The account is dated November 18, 1844. After examining it, I drew up a paper, in behalf of Mr. William Boott, Mrs. Brooks, and myself, stating our grounds of objection to it, so far as we were then informed. That paper was in the form of a petition to the Judge of Probate. It was not signed by any body, but, as a draft, was submitted by me to Judge Warren, November 24, 1844, for his advice respecting it, and respecting the best course of proceeding to effect my declared object, which was, simply, to place whatever was left of the property in charge of a safe trustee with proper securities. So Judge Warren states. [Ante, p. 139.]

Negotiations thereupon ensued between him and Mr. C. G. Loring, as counsel, and Mr. Lowell, as the friend and ad-

viser of Mr. Boott. Some conferences, and some correspondence, between Mr. Lowell and myself, also occurred; and the result of the whole was the agreement of compromise heretofore mentioned.

As my present subject of complaint is a grave one, I will now extract my former account of it, at length;—

"I have already mentioned, that a part of the agreement, under which Mr. Wright Boott's account was passed, without question, in the Probate Court, was, that Mr. William Boott, Mrs. Brooks, and myself, should enter into a general release of whatsoever claims we might respectively have on him, as executor or trustee. With that view a paper was prepared by counsel, dated December 9, 1844, whereby '*We, the parties executing this instrument, heirs at law, and representing heirs at law, of Kirk Boott, late of Boston,*' &c., 'in consideration of one dollar,' &c., 'remise, release, and discharge him, the said John W. Boott, his heirs,' &c., 'from all claims and demands, of whatsoever name and description, which we, or either of us, ever had, now have, or may hereafter have, against him, the said John W. Boott, as executor of the last will and testament of the said Kirk Boott, or as trustee under any of the provisions of said will.' This paper, it will be seen by the Appendix, (No. 30,) purports to have been signed, sealed, and delivered, *in the presence of Hugh Mathews*, first by myself and wife, then by Mrs. Wells, Mr. William Boott, and Mr. Wells, and lastly by '*J. A. Lowell, for himself and Edward Brooks, trustees under the will of Kirk Boott*'—meaning the late Mr. Kirk Boott, of Lowell, for whose family Mr. Lowell and myself were joint trustees.

"Now my agreement, in this matter, extended no farther than to the release of any personal claims of Mrs. Brooks and myself. I positively refused to be instrumental, *as trustee for others*, in releasing, for a nominal consideration, any claims which might justly belong to them, preferring, if that were insisted on, to resign my trust, and leave the settlement of such a question to the discretion of my successor, *of which Mr. Lowell had distinct notice*.

"The circumstances attending the execution of the paper in question, so far as known to me, were these. It was brought to me about the time of its date, and before it had been signed by any body. It was thereupon executed by myself and Mrs. Brooks at my own house. *Hugh Mathews* was, at that time, a servant in my family, and was called in to witness our signatures, which he did. He signed his name as a witness, in the proper place, but the precaution of specifying whose particular signatures he witnessed was neglected. The paper then passed out of my hands, and I never saw it afterwards. At what times, and in whose presence, it was signed by the other parties, I am not informed—certainly not in the presence of *Hugh Mathews*. I delivered it, signed by myself and wife only, and witnessed by said *Mathews*, to Mr. William Boott, who probably signed

it afterwards, without any witness, and delivered it either to Mr. Lowell, or to one of the counsel in the case. Mr. and Mrs. Wells were at Cambridge. They were never called upon by me, nor, as I am informed, by Mr. William Boott; and Hugh Mathews had nothing farther to do with the matter. Mr. Lowell, no doubt, obtained their signatures, and afterwards signed the paper himself, in the form above stated.

"I have also mentioned above, that it was part of the agreement, that confirmatory deeds of the mansion house, satisfactory to Mr. Bowditch, as counsel for the purchaser, were to be executed. Accordingly, a few days after the paper above-mentioned had been returned to Mr. Lowell, a draft of a deed of the mansion house to Mr. William Lawrence, intended to be signed by Mr. and Mrs. Wells, myself and wife, and Mr. William Boott, was sent or delivered to me by Mr. Lowell. That deed was already executed, I believe, by Mr. and Mrs. Wells. At any rate, it appears by the certificates of acknowledgment, that it was executed by all the parties above-named, on the 16th of December;—by Mr. and Mrs. Wells, in the presence of Mr. Lowell, who witnessed their signatures; and on the same day, by Mr. William Boott, Mrs. Brooks and myself, in the presence of Mr. P. C. Brooks, who witnessed our signatures.

"On the following morning, December 17, I returned that deed, so executed, to Mr. Lowell, with the following letter, intended to prevent any possible misapprehension of my intentions, *already verbally made known to him*, not to release any claims in my capacity of trustee.

[Here followed the letter, which I omit in this quotation, as it will be found, in my text, at page 652.]

"This letter, it will be observed, was a distinct notice to Mr. Lowell, of the fact which Judge Warren states in his letter to me, that the assent to the passing of the account exhibited was, *on my part*, by way of *compromise* merely, and not because I believed, or intended to admit, the balance claimed, to be a balance justly due. And yet I was not at that time aware, that the account presented had been made up by *Mr. Lowell himself*, and that Mr. Wright Boott had, for a long time, *positively refused to adopt it*; which fact I subsequently learnt, as above stated.

"It was also distinct notice that I could not, and should not, consent to be a party to any such waiver of claim, *in my capacity of trustee*, and that my intention then was immediately to resign my trust; which intention I was afterwards induced to alter, as will presently appear.

"It will also be noticed, that a variance between myself and some of the cestui que trusts, is alluded to. That variance consisted only in a difference of views as to the grounds, on which I had proceeded, in bringing about the arrangement, by which the property in Mr. Wright Boott's hands was to be transferred to a new trustee. Mrs. K. Boott, it will presently be seen, had sided against me in the matter, but with no information of the facts, material for a correct judg-

inent, except such as was derived from Mr. Lowell. What that information was, will presently appear. The fact was not known to me at the time of the writing of this letter.

"Finally, it is apparent, that I had no idea, at the time of the writing of the letter, that any release of the claims of Mr. K. Boott's family had been made, or attempted, by any body.

"Soon after the sending of that letter, and on the same day, I had an interview with Mr. Lowell, at which he presented a draft of a deed, prepared for himself and myself to sign, as trustees. A short conversation then occurred on the subject of my letter. I repeated my determination not to sign any paper, releasing claims in behalf of Mrs. K. Boott, and her family; to which Mr. Lowell replied *that it would not be necessary*—meaning, as I understood, that no such release was demanded; and, upon examining the deed, which I was requested to sign, I found it to be a simple quit-claim, to Mr. William Lawrence, of any right or title we might hold, as trustees, in the mansion-house estate, without any release, express or implied, of claims on the executor. I saw no objection to executing *that*, as the sale was an advantageous one, and the proceeds, according to the arrangement made, were to pass into the hands of a new trustee, who was entirely satisfactory to me. Accordingly, this deed was executed by Mr. Lowell and myself jointly, on the 17th of December, (as appears by the certificate of acknowledgement,) in the presence of two witnesses. Understanding, thus, from Mr. Lowell, that I was not expected, as trustee, to join in any release of claims on the executor, and finding that the deed, which Mr. Lowell had spoken of, contained nothing of the sort, I was induced, on reflection, to alter my determination of resigning the trust, considering that it was a personal confidence reposed in me by a friend, for the benefit of his family, which I ought not to disappoint, or surrender, from light considerations; and I was, besides, led to believe, that Mr. Lowell himself was rather desirous I should not resign. I accordingly gave him notice, soon after, that he need not trouble himself to prepare the account of our joint trusteeship, as requested, since I did not intend, at present, to resign.

I heard no more from Mr. Lowell, on the subject of releasing claims. He never intimated to me that he had executed, or intended to execute, any such release; still less that my name had been, or was to be, used in any way for such a purpose. Judge, then, my surprise, when, upon seeing an attested copy from the probate records, in July, 1847, of the general release of December 9, 1844, which I had signed on my individual account only, and had refused to sign as trustee, I discovered, for the first time, that Mr. Lowell had actually signed that paper, and not for himself alone, as *one* of the trustees, but expressly "for himself and Edward Brooks, trustees under the will of Kirk Boott;" and that this signature, as well as the signatures of Mr. and Mrs. Wells, and Mr. William Boott, stood, apparently, witnessed by my own servant, Hugh Mathews, (who had witnessed the signatures of Mrs. Brooks and myself *alone*,) as if it were all one act, done at one time, and in the presence of one witness,

and of course with my full knowledge and assent. The effect of such a signature, under such circumstances, I leave for others to settle—noting, by the way, that it appears to have been unaccompanied by a seal. At least it appears by the record, (the original paper having been withdrawn from the probate office, I have not been able to see that,) that six persons had signed the release, but that five seals only are affixed. But whatever the effect may be, it seems that Mr. Lowell, *intended* to release those claims, and assumed to act *in my behalf*, and to use *my name as assenting to the act*, not only without my authority, but without my knowledge, and notwithstanding I had positively refused to be implicated as a trustee, in any such voluntary release of the rights of others, and had given him distinct notice of that determination. Immediately upon the discovery of this assumption, I addressed to Mr. Lowell the note of July 8, 1847, (App. No. 56,) calling for explanation, to which he has not thought proper to return any answer." [B. pp. 125 to 129.]

The answer comes in the "Reply," and it is proper that the reader should see that, also, at length.

"I have said enough, perhaps too much, of that part of the pamphlet that is personal to myself. It is so apparent, on the face of it, that the issues with me are not the true ones, but are mere pretexts, for calling in the public, as arbiters in Mr. Brooks's quarrel with Mr. Boott, that it would, perhaps, be wise to confine myself to the latter. There is, however, one other subject of complaint preferred against me of so extraordinary a character, as to deserve a passing notice. I refer to the alleged use of Mr. Brooks's name in the signature of a release, on behalf of a trust held by him and myself jointly, under the will of the late Kirk Boott, of Lowell. The facts are briefly these:—

"When Judge Warren brought to me a proposition from Messrs. Brooks and William Boott, which was rejected, he had taken the precaution of providing himself with a release, duly executed by them, of all demands on Mr. Boott as executor and trustee, to be handed to me in case the offer were accepted. Although this contingency had not happened, he yet left the paper with me, but I was not to use it without his previous authority.

"On a subsequent day, I accidentally met Mr. Brooks and had a conversation with him, which led to the final settlement. He said, that if I would write him a letter embodying the substance of what I had said to him, he thought they would agree to a settlement on that basis. I did so in a letter dated December 10, 1844, of which the opening sentence was as follows:—

‘ BOSTON, DECEMBER 10, 1844.

‘ EDWARD BROOKS, Esq.

‘ DEAR SIR,—I do not know why I should be worrying myself about other people's affairs; but the kindness that I experienced in

early life from Mr. and Mrs. Boott has endeared to me all of the name, and I would fain do something to alleviate the dissensions existing among their children.'

"I then proceeded to detail the plan for the future management of the trust fund, which had formed the subject of our conversation in the morning. The next day I received from Mr. Brooks the following reply:—

[I omit the letter here, as it will be found at page 637.]

"Not one word, it will be observed, about any reluctance to consent to this arrangement as joint trustee with me under the will of Mr. Kirk Boott. The letter is a full and cordial assent to the proposed arrangement, without reservation.

"I immediately showed this letter to Judge Warren, and procured his consent to make use of the release he had left with me, which I sent to Cambridge, to be executed by Mr. and Mrs. Wells, and also executed myself, in behalf of the trust under the will of Kirk Boott, and in the usual form of such signature. This I never doubted that I was fully authorized to do by Mr. Brooks's note, above cited. On the following probate day, Monday, December 16, 1844, (the dates are here important,) this paper was exhibited to the judge of probate, in evidence that the opposition to the passage of the accounts, formerly notified to him, was withdrawn, and the accounts were accordingly on that day passed. Mr. Boott, the next week, when he presented his third account, which was one of mere form, left all his discharges for record.

"Now Mr. Brooks's complaint is, that I used his name, not only without any authority from him, but with express notice of his dissent. (p. 125.)

"'What is to be said,' says Mr. Brooks, in another place, (p. 172,) 'of his assuming *in my name*, as well as his own, to execute a release of our joint claim on the executor as trustees for the family of Mr. Kirk Boott, without authority from me, and without my knowledge, and after I had positively declined being in any way instrumental in releasing any claims which I held as a trustee for others.'

"To show how eagerly, and how blindly, Mr. Brooks grasps at any excuse for throwing blame upon me, I have only to call attention to the fact, that the letter from him to me, published in his pamphlet (p. 126,) as evidence that he had notified to me his dissent, is dated December 17, 1844, that is to say, the day after the account had been passed at the probate office!

"He says, himself, (p. 165,) that it is placed beyond doubt, that the account was passed and allowed 'because no one objected, and because releases were filed from all parties interested;' and yet he now pretends, that his letter of December 17th was a seasonable notice not to sign on his behalf a release, which was exhibited at the

probate court, signed by all the parties interested, on the 16th! This contempt for chronology is, as I have already had occasion to show, characteristic of Mr. Brooks's mind.

"This is not all. His letter to me, of December 17th, had no reference whatever to any *release*, but to a deed of the estate in Bowdoin Square, which required our joint signature; which signature Mr. Brooks, in that letter, very capriciously, as it seemed to me, refused on his part. I immediately went to his office and persuaded him to sign it. Mr. Brooks says (p. 127), that in that conversation, he repeated his 'determination not to sign any paper, releasing claims in behalf of Mrs. K. Boott, and her family; to which Mr. Lowell replied that *it would not be necessary*;' emphasizing these words to intimate, I suppose, some deception on my part,—whereas, if I had made any such remark, it would have been the most natural one in the world, as the account had been passed the day before! I will not dwell on the absurdity of a trustee allowing accounts, that he believes to be fictitious, to be passed, no one appearing to object to them, and the next day refusing, on the plea of conscience, to sign merely *pro forma* discharges." [L. pp. 190 to 193.]

This answer, I now propose to examine, and to state, in connexion with it, some further facts, and to exhibit some additional evidence, in order that the reader may see which party is, in this instance, guilty of a "contempt for chronology," and of such other established land-marks of truth as the case may involve. I shall leave it to the reader to affix what epithet he pleases to the act of signing another man's name, without authority, to a legal instrument, and using it to aid in the passing of an account. But that Mr. Lowell did that act, and that his reply to the charge consists of nothing but evasion and falsehood, I intend to place beyond controversy.

I call attention, first, to the following sentence:—

"When Judge Warren brought to me [Mr. Lowell] a proposition from Messrs. Brooks and William Boott, which was *rejected*, he had taken the precaution of providing himself with a *release*, duly executed by them, of all demands on Mr. Boott as executor and trustee, to be handed to me in case the offer were accepted."

This sentence, connected with the general scope of the "Reply," gives us to understand, that Judge Warren was so well aware of the harsh character and unreasonable pretensions of myself and Mr. William Boott, (causeless and relent-

less persecutors,—so the “Reply” holds out,—of Mr. J. Wright Boott,) that he would not even *trust his own clients* to stand by their bargain, if one should be made; but “had *taken the precaution*” to bind them, beforehand, to a formal release, which he drew of his own motion, and got them to sign, in order that he might be *sure to hold them*, by handing it at once to Mr. Lowell, if he should accept our proposal.

The further intimation is, that some proposition was there-upon made by Judge Warren, in our behalf, of such a character as might be expected from unreasonable men, and that it was promptly rejected.

Now,—will the reader believe it?—the *only* proposition, made by us, through our counsel, Judge Warren, to Mr. Lowell, was, on consultation with Mr. J. Wright Boott, for whom Mr. Lowell acted, *immediately accepted*;—and Judge Warren, instead of voluntarily arming himself against his own clients with a release, for the purpose of making that proposition, in fact drew the release, spoken of, *three days after* the proposition had been *accepted*, and then drew it *at the special request of Mr. John A. Lowell!*

I cite Mr. Lowell himself, as my witness. The original of the following letter, in his own hand-writing, is in my hands, dated, it will be observed, *three days before the release!*

LETTER FROM J. A. LOWELL TO C. H. WARREN.

“ BOSTON, DEC. 6, 1844.

“ DEAR SIR :

“ *I have arranged the matter with Mr. Boott upon the terms agreed upon between us.*

As Mr. Loring is very much engaged, *I shall feel much obliged if you will prepare a discharge*, such as, under the circumstances, you think *your clients* should sign, and I will submit it to Mr. Loring.

I think it would be well if it were *so drafted* that Mr. Wells and the *other members of the family* here could unite in it.

I am,

Yrs., with much respect,

J. A. LOWELL.”

CHARLES H. WARREN, Esq.,
Court Street.”

The “*clients*” of Judge Warren were Mrs. Brooks and myself as heirs in her right, and Mr. William Boott, as an heir in his own right. The “trustees under the will of Kirk Boott,” were *not* his clients. Those trustees merely *represented* the Kirk Boott family. Judge Warren never was retained in behalf of that family, nor requested to act for me in that representative capacity. Indeed, I had no right, as I conceived, to move in that capacity, except concurrently with Mr. Lowell, my co-trustee.

The proposal, which Judge Warren had made,—the only proposal ever made by him in behalf of his clients,—is described by himself, thus :—“*I proposed to him* [Mr. Lowell] to waive all examination of the account and its vouchers, that Mr. B. should resign his trust, and that the heirs, upon his doing so, *should give him a release* of all further claims upon him.” [Ante, p. 139.] The same gentleman says, “Mr. Lowell, after consultation with Mr. J. W. Boott, acceded to my proposition.” [Ante, p. 140.] The foregoing letter of Mr. Lowell was his notice to Judge Warren of the result of that consultation. It informed him that Mr. Boott agreed to our terms. An *executed* release had not been obtained from us *beforehand*, to be handed over forthwith; but Mr. Lowell’s letter, signifying his acceptance of our offer, requests that a *draft* of a release should be prepared. This was no novelty proposed by him,—still less by our own counsel,—for the purpose of *binding* us, but a paper, necessary to be drawn by somebody, *conformably to our voluntary offer*, that offer having been accepted. Judge Warren was the person who drew the instrument, not as a measure of *precaution*, for his own security in making a proposal, but *after the acceptance* of the proposal, and only *because Mr. Lowell requested him* to draw it, in consequence of the engagements of Mr. Lowell’s own counsel. The paper was not made, or executed, before the *ninth* of December, as its date shows; [Ante, p. 622.] and our proposal was accepted on the *sixth* of December, as the foregoing letter shows. Yet, the very exact and scrupulous author of the “Reply” says,—

"When Judge Warren brought to me a proposition from Messrs. Brooks and William Boott, which was *rejected*, he had *taken the precaution* of providing himself with a release, *duly executed by them* of all demands on Mr. Boott as executor and trustee, *to be handed to me in case the offer were accepted.* Although this contingency had *not* happened, he [Judge Warren] yet left the paper with me," &c.

So much for the beginning of Mr. Lowell's statement of facts. His next step is to speak of some *subsequent* conversation with me, as having *led to the final settlement*, stating that *I proposed to him that he should write me a letter, embodying the substance of what he had said*,—as if he had been the *author* of the *proposal of compromise*; that he accordingly wrote a letter, dated December 10, of which he prints the *first sentence, only*, and gives the reader to understand that the *whole* letter did but *repeat* his verbal proposal for a compromise; and that my answer, of December 11, which he prints entire, was *my assent* to his proposal, and *constituted the agreement of compromise*. [Ante, pp. 625–6.]

Now in this, also, I am compelled to say, there is not one word of truth, from beginning to end. The reader will observe, that, by Mr. Lowell's letter of December 6, above printed, assenting to Judge Warren's proposal, *the agreement of compromise was complete*. Mr. Boott had agreed to resign, and we had agreed, thereupon, to make no opposition to his account, and to release him from all further claims. *This was the compromise.* Nothing remained, to be agreed upon further, unless it were the independent point of selecting some suitable person to succeed to the trust. This hardly required an agreement, as the judge of probate has full power to fill such vacancies. However, the parties endeavoured to agree in guiding his selection; and the reader will observe, that my letter of December 11, which I shall presently print, merely signifies that Mr. William Boott and myself had fixed upon Mr. Charles G. Loring to be that trustee, if acceptable to Mr. Lowell. A new fact, which the reader should now be informed of, is, that *Mr. Lowell was extremely desirous to be that new trustee himself*; for what reasons the reader may judge, when he sees the whole evi-

dence in this case. It was this desire, on his part, which produced a suspension of further action (except in the preparing of the release,) from the sixth to the eleventh of December.

Judge Warren, when he next saw Mr. Lowell, after the receipt of his letter signifying the assent of Mr. Boott to the surrender of his trust, (the letter of December 6,) took occasion to suggest, that Mr. Lowell's own counsel and connexion, Mr. Charles G. Loring, would be a very suitable person to be the trustee, and, as he thought, would be agreeable to me. Mr. Lowell, of course, could make no reasonable objection, and said nothing, I believe, to Judge Warren, of his own wish and expectation in that behalf; but, on the contrary, gave him to understand that he thought Mr. Loring would be a most excellent choice. He met me, however, not long after, and the conversation occurred, to which he alludes in general terms, and a part of which I shall now describe more particularly.

It was, in truth, one of several conversations between Mr. Lowell and myself about this time, embracing, among other things, his remarks, concerning former mismanagement of the family property, quoted by Mrs. Brooks, on my report, in her letter to her mother, of December 11, before referred to. [Ante, p. 596.]

The particular conversation, now in question, occurred in State-street. It was begun by Mr. Lowell; and his object was to urge upon me, the propriety and expediency, under all circumstances, of permitting *him*, (Mr. Lowell,) to become the new trustee. He alluded to the character of the property, to his familiar acquaintance with it, to his long and intimate relations with the Boott family, and to the fact that he was already an agent for Mrs. Boott, who would, undoubtedly, be gratified to have him for her trustee. He said that other members of the family desired it; and he proceeded to tell me how he intended to manage the property, very advantageously both for her and for the heirs, and that Mr. J. Wright Boott, whose

unfitness for such a trust he admitted in very plain terms, should not be allowed to intermeddle. A portion of his remarks, respecting his proposed management of the property, I told him I thought he had better reduce to writing ; and that I would confer on the matter with Mr. William Boott. Those remarks were made in answer to my observation that I did not think very well of manufacturing stock, as an investment for such a trust, because of its fluctuations and irregularity of income.

That he should become the trustee certainly seemed, on many accounts, both natural and desirable. My general confidence in Mr. Lowell's adaptation for such an office had, at that time, been in no degree shaken by the merely overzealous part, (as, in my then state of information, I supposed it to be,) which he had been acting in behalf of Mr. J. Wright Boott. I had but one real objection ; and that I, at last, frankly stated to him, to this effect :—

“ Mr. Lowell, the only objection that I see, upon the whole, to your being the family trustee, is, that Mrs. Brooks and I have reason to believe, that you have allowed your name to be used with Mrs. Boott to prejudice her mind against certain members of her family.” Mr. Lowell's answer was, in a very emphatic tone, “ If my name has been used, Mr. Brooks, to prejudice Mrs. Boott against any of her family, I assure you it has been entirely without my knowledge or consent.” To this I said, moving towards the door of an insurance office, near at hand, “ Just step in here, then, and put those very words on paper, and I agree, at once, that you shall be the trustee.” “ No,” says Mr. Lowell, “ I am not going to put any thing on paper about it.” My reply, was, “ Very well,—then you can't be the trustee,—that's all.” And thereupon we parted.

Mr. Lowell, perhaps, did not think me so serious, as I was, in considering his mischievous interference, as we regarded it, in our family affairs, to be an insurmountable objection. At any rate, not a great while after, I received his letter of December 10, of which he has printed the first sentence

only,—presuming, no doubt, from the circumstance of my omission to print that letter formerly, while printing many less important pieces of evidence, that the original must have been lost or destroyed. He ran for luck in that; and, with his usual sagacity, guessed aright. I had lost it, and searched for it in vain, at the time of my former writing. But his sagacity could not enable him to foresee that I should afterwards recover it,—as I did,—though not till some considerable time after the publication of his “Reply.”

I shall, now, since he has favoured us with so small a specimen, lay it, in full, before the reader.

LETTER FROM JOHN A. LOWELL TO EDWARD BROOKS.

“BOSTON, DEC. 10th, 1844.

“EDWARD BROOKS, Esq.,

DEAR SIR:

“I do not know why I should be worrying myself about other people’s affairs,—but the kindness that I experienced in early life from Mr. and Mrs. Boott has endeared to me all of the name, and I would fain do something to alleviate the dissensions existing among their children.

I know of no mode so likely to effect this end, as to remove all occasion for future collision.

Should the property now be placed in the hands of a trustee, in whom all parties could not but place an implicit confidence; who would consider the interests of the heirs as much confided to him, as that of your mother; who would endeavour to keep the capital entire by applying the overflowing of prosperous years, with Mrs. Boott’s consent, to the increase of the fund; in such case, I think that the manufacturing property might be preserved with obvious advantage to all parties.

Under a different management, I agree with you that it would be wiser and more just that it should be sold, and the proceeds funded in a way that would not endanger the capital.

The plan that occurred to me was this.

Mrs. Boott to expend a sum to be agreed upon between her and the trustee.

The remainder of the income to be funded and kept separate. At Mrs. Boott’s decease, so much of this reserved fund to be applied to the credit of the estate as shall be required to make good the capital. The residue, if any, to be considered as Mrs. Boott’s personal estate, devisable or inheritable as such.

I have not communicated these views to any one, but have no doubt of obtaining Mrs. Boott’s concurrence in them.

I could not advise Mr. J. W. Boott to resign unless a successor were previously agreed upon. I am, Dear Sir, truly yours,

J. A. LOWELL.”

Though it be stepping aside from the point immediately in hand, I desire, while this letter is fresh, to call the reader's especial attention to the clause, which proposes to take, from time to time, out of the income of the trust property, the means of forming a reserved fund, and further proposes, that, "at Mrs. Boott's decease, so much of this reserved fund" is "to be applied to the credit of the estate, as shall be required to make good the capital." The reader may at least suspect that he sees in this *one* excellent reason why Mr. Lowell thought it inexpedient to extend the quotation from his letter beyond the *first sentence*,—which expresses nothing but his own amiable sentiments towards the whole Boott connexion.

What did he mean by reserving income "to be applied to the credit of the estate," and "to make good the capital?" Perhaps he will say that he meant no more by this language than by the preceding phrase of "*keeping* the capital entire." I cannot undertake to affirm what he did mean. But *making good* the capital, and crediting *the estate*, seem rather to indicate the restoration of that, which had been already lost, than the mere keeping up of the existing capital, which the new trustee might receive. The true question is,—What did Mr. Lowell expect me to understand from the letter? To enable the reader to determine that, he must place himself in my position at the time. I had agreed to allow Mr. Boott's account, just as it stood, provided he would resign. Mr. Lowell considered that a point settled, if he pleased to have it so. He had no longer a motive for standing on particularly high ground. The account,—notwithstanding its valuation of the stocks above their market value when they were first stamped as trust property,—admitted, as I have shown, that Mrs. Boott's trust fund was defective by \$3715 45. That the trust capital had been impaired and *lost*, to that extent at least, was apparent on the face of the paper. In conversation, (the account being agreed to,) Mr. Lowell had freely admitted Mr. Boott's unfitness for the trust, and the considerable losses sustained, in consequence, by all persons inter-

ested in the estate. Mrs. Brooks's letter of December 11, (*the day after* the letter of Mr. Lowell, now in question,) shows what Mr. Lowell had just said to me, as I had reported it before any controversy had arisen between us. The letter was printed in my former pamphlet, and will reappear, with other family correspondence, in another part of this case. A sentence or two, once before extracted, should be read in this connexion :—

"Mr. Brooks has this week had two long conversations with Mr. Lowell, who said he agreed entirely with Mr. Brooks in his views, and Mr. Lowell denied ever having said or thought, that Mr. Boott had managed the estate well, or that he considered him a fit person to have the care of property. Mr. Lowell then went on to say, 'If you, Mr. Brooks, or I, or any good man of business, had had the care of that estate, what a noble property it would have been. Mr. Boott should have been worth \$100,000; each heir should have had a handsome fortune, and Mrs. Boott, with more money to spend yearly than she ever had, should have laid by \$50,000 to have bequeathed as she liked, and that it was a sort of miracle that any thing was left.'"

Did not Mr. Lowell expect, then, that I should interpret his letter conformably to his recent conversation? Did he not intend that I should understand his plan to be to restore lost capital out of future income? Did he not expect that his plan, with that feature in it, would be more likely to be agreeable to me; and did he not intend that I should put that construction on it? His "*Reply*" was written, unfortunately for him, under a belief that this letter had not been preserved, and that nothing bearing the signature of John A. Lowell, could be brought against him by me, which would even bear doubtfully on the question of Mr. Boott's admitted mismanagement. He could not afford to admit, in the "*Reply*," that he had formerly admitted any thing; still less to expose, by printing his whole letter, so much as an ambiguity, even, on a point so vital in this controversy. This, I believe to have been one motive for the suppression. But, however, that may be, I shall show another reason, too plain for doubt; namely, that the letter, however interpreted as to the making good or keeping good of capital, *distinctly falsifies the "Reply"* in a very material statement, respecting

Mr. Lowell's *authority to sign the release* in my behalf. He says he was authorized *by my answer to this letter*. But when the letter and the answer are placed side by side, it will be seen that this pretence has not even a colour of foundation in truth.

But,—to return to narrative,—the general object of the letter was quite apparent to me. It merely followed up our previous conversations, with a view to obtaining the trusteeship, which would aid Mr. Lowell in keeping his long-established control over the Boott family and property. This was the surest way to secure such settlements of accounts, and such answers to curious inquiries, as might best suit his ends. Let us look to the indications of the letter.

The very conciliating sentence, with which it opens,—declaring the absence of all personal interest,—adverting to the early kindness of Mr. and Mrs. Boott, which had so “*endeared*” to him “all of the name,”—and setting forth his sincere desire to *do* something to alleviate the dissensions of their children,—was well calculated to smooth over the effect of any little indiscreet movement on his part, which we might suppose to have influenced the feelings of Mrs. Boott. It was to answer as a substitute for the written disclaimer, which I had asked for. I had expressed my doubts of the expediency of keeping a trust fund of that description invested in so fluctuating a property as manufacturing stock, which had, at one time, yielded an annual income of nearly \$30,000, and, at another time, none. It was one object of the writer to show how this kind of property, yielding large income on the whole, might,—if managed by a trustee having influence enough with Mrs. Boott to obtain her consent to a reservation from years of abundance,—be made to turn to the advantage of the heirs; and, particularly, of those of the heirs, (Mr. William Boott, Mrs. Brooks and myself,) against whom Mrs. Boott had been really prejudiced through Mr. Lowell's interference, as I shall hereafter show. This would, of course, be effected, if a portion of her income were withdrawn from her own disposal,

and applied to the restoration of the lost capital of the estate for the benefit of those, who were entitled to it. But the main idea, intended to be conveyed, without stating it in direct language, was, that *the writer*, in consequence of his known influence over Mrs. Boott, was the man, of all others, to effect this, *should he be made trustee*. "I have not communicated these views to any one," he says, "*but have no doubt of obtaining Mrs. Boott's concurrence in them.*" As a still further inducement to the selection of himself for the trust, the last sentence suggests,—notwithstanding that Mr. J. Wright Boott's resignation had once been agreed to, as the reader has now seen, under Mr. Lowell's own hand in his letter of December 6,—that the proposed resignation was still open to retraction, and that he (Mr. Lowell,) "could not advise Mr. J. W. Boott to resign, *unless a successor were previously agreed upon.*"

The expectation undoubtedly was, that, upon these suggestions, we should immediately assent to *his* succession. But the opinion of Mr. William Boott and myself was, that the whole income of the trust fund, however invested, fairly belonged to Mrs. Boott, and ought to be at her own disposal; and our feeling of objection to Mr. Lowell, as the family trustee,—growing out of his interference with Mrs. Boott, to bias her opinions concerning the course we had taken in an unfortunate family difference, respecting the conduct and sanity of Mr. J. Wright Boott,—was quite insuperable.

Without undertaking to except to his scheme, therefore, I simply replied, as follows:—

EDWARD BROOKS TO JOHN A. LOWELL.

"DEC. 11, 1844.

"JNO. A. LOWELL, Esq.,

DEAR SIR,—I have shown your letter to Mr. W. Boott. We have conferred together upon it, and find nothing to except to.

We have fixed on Mr. Charles G. Loring as the new trustee. From what Judge Warren said last week, we infer that this gentleman will be agreeable to you, and he is entirely so to us.

With great regard,

Your Obd't Serv't,

EDWARD BROOKS."

It was not easy to escape from this. A formal nomination was made ; the person could not reasonably be excepted to,—especially by Mr. Lowell, who had, in fact, already committed himself on that point to Judge Warren ;—and, after another brief conversation with me, finding that I was immovable on the subject of his own appointment by my consent, he handed my letter to Judge Warren, with notice that our nomination was agreed to ; and our release of Mr. J. Wright Boott, signed by myself and Mrs. Brooks and Mr. William Boott, was thereupon handed by Judge Warren to Mr. Lowell, in order that he might collect the signatures of other parties.

The reader will now notice the following points :—

1. The original proposal for a compromise *came from us*,—not from Mr. Lowell,—and was, simply, that we would waive all proof and inquiry about the account, and release all our claims on Mr. Boott, if he would resign, and allow the admitted property to go into new hands.
2. *An acceptance* of this proposal was *signified in writing by Mr. Lowell*, as soon as he had consulted with Mr. Boott.
3. *No proposition of ours was rejected.*
4. Judge Warren, when he made our proposal to Mr. Lowell, had *not* “taken the precaution of providing himself with a release duly executed” by us ; but, *after our proposal had been accepted*, drew the release *at the particular request of Mr. Lowell*, and in conformity with our original proposal.
5. It was *not* a conversation between Mr. Lowell and me, which *led to the settlement*; but the general terms of settlement were substantially agreed on, in the manner above stated, between Judge Warren and Mr. Lowell, leaving no further subject for agreement, except the independent question, who should be the successor in the trust.
6. The sole object of Mr. Lowell, in the subsequent conversation with me, was to induce me to agree that *he, Mr. Lowell*, should be the successor ; which I declined, for the reason stated.

7. Mr. Lowell's letter, of December 10, of which he prints the opening sentence, was *not*, as he suggests, the *basis* of the settlement, (which had been agreed to four days before,) but a letter *having the same object with his conversation*, and suggesting, by connexion with that previous conversation, something, which was *not agreed to by us*, namely, that *he* should be the trustee.

8. *The proposal for the appointment of Mr. Loring*, came from us, and *not*, as the "Reply," might lead its reader to infer, from Mr. Lowell,—but was merely acquiesced in by him, much, I imagine, to his own discomfiture, when he found he could not be the trustee himself.

All these matters,—except what passed in the conversation between Mr. Lowell and me,—the reader now has in proof, *by the letters* produced; and, although the tenor of that conversation cannot be directly proved, either by a witness or a writing, *the fact of a conversation is stated by Mr. Lowell*; and also, that it related to a "*plan for the future management of the trust fund*." The substance of this plan, which, he says, "had formed the subject of our conversation in the morning," he also says, is embodied in his letter of December 10. That letter, of which, he, supposing the original lost, suppressed all but the first sentence, *I produce in full*; and, although it does not state, *in terms*, that his own appointment to the trusteeship was a *part* of the "plan," I submit to the reader, whether it does not pointedly support that conclusion, which I report to have been the purpose of the conversation, followed up by this letter.

I further desire it to be noted, that *every one* of the eight propositions, above stated, and mostly *proved* by contemporaneous papers, is a *direct reverse* to some one of the daring statements, or suggestions, compressed into a single page of the "Reply"!

But the falsehood of the "Reply," its purpose of misleading, and the intention to suppress so much of a contemporaneous letter as would expose the falsehood, become perfectly

transparent, when we perceive that, after citing the *first sentence only* of Mr. Lowell's letter of December 10, and printing my entire answer of December 11, the "Reply," goes on to say, in reference to my answer,—

"Not one word, it will be observed, *about any reluctance to consent to this arrangement as joint trustee with me under the will of Mr. Kirk Boott. The letter is a full and cordial assent to the proposed arrangement without reservation!*"

What the proposed arrangement was, is artfully concealed from the reader, by the suppression of all the material part of Mr. Lowell's letter. But the reader is given to understand, from the entire statement, that the proposal was a *general proposal of compromise, distinctly including my claims as trustee*,—and that my letter was "a full and cordial assent" to that proposal !

Now, the reader, by laying the two letters together, will observe, that my answer was not only not an assent to *any general arrangement of compromise proposed by Mr. Lowell*, but was a mere notice, that, without excepting to his scheme for the *future management of the property*, should he become the trustee, Mr. William Boott and myself had selected, and *thereby nominated*, Mr. Charles G. Loring for that office. There is "not one word, it will be observed," in his own suppressed letter, which I was answering, about *any arrangement to be made by me as "joint trustee" with Mr. Lowell, "under the will of Mr. Kirk Boott."* There is not even the most distant allusion to any such matter, *either in his letter, or in my answer.* It is not even pretended, in the "Reply," that this subject of releasing claims, held by us, jointly, in trust for others, had ever been broached in any conversation, preceding the correspondence, so as to be drawn into it by implication. Yet, the "Reply" gives the reader to understand that Mr. Lowell's suppressed letter must have embraced that subject distinctly ; my letter is printed as evidence of my "full and cordial assent" to the supposed proposal ; and, finally, the "Reply" explicitly declares,—in reference to Mr. Lowell's signing of my name as trustee, to a release of

the claims held by us in trust,—“*This I never doubted that I was fully authorized to do BY MR. BROOKS'S NOTE ABOVE CITED !*”

But the reader has not, yet, *all* the facts before him. I have shown several deliberate misstatements of facts, in this part of the “Reply.” But I propose to show several more; and, particularly, to show, too distinctly for escape, the original falsehood, through which the account was passed, by the unauthorized and secret signing of my name to the release.

After Mr. Lowell had signified to Judge Warren his assent to our nomination of Mr. Charles G. Loring, (whereby every subject of agreement relative to the compromise was concluded, and nothing remained but to carry it into execution,) the next stage in the proceeding was the drafting of a deed of the mansion-house for the heirs to sign,—their signature to such a deed being the original desideratum, which had led to the stating of an executor’s account, and to the compromise concerning the allowance of the account. This deed bears date December 14, 1844,—the date, probably, at which it was written. It was first executed, as mentioned in my former statement, by Mr. and Mrs. Wells, apparently in the presence of Mr. Lowell, who is an attesting witness to their signatures. It was acknowledged by them, December 16. It was executed, in the evening of the same day, by myself and wife, and by Mr. William Boott at my house, where my late father, happened at the time to be. He witnessed our signatures, and took our acknowledgements, dated December 16. These dates and attestations are proved by the recorded deed. The release of all claims on Mr. Boott, which had been previously drafted by Judge Warren, (December 9,) at Mr. Lowell’s request, and sent to me, had been signed by me, personally, but *not as trustee*, and by my wife, and by Mr. William Boott, and had been returned to Judge Warren. By him, it seems, it was handed to Mr. Lowell, who, we are told, “was not to *use* it without his previous authority.”

The “Reply,” moreover, informs us, that,—

"On the *following* probate day, Monday, December 16, 1844, (the dates are here important,) this paper was exhibited to the judge of probate, in evidence that the opposition to the passage of the accounts, formerly notified to him, was withdrawn, and the accounts were accordingly on *that* day passed. Mr. Boott, *the next week*, when he presented his third account, which was one of *mere form*, left all his discharges for record." [Ante, p. 626.]

Now, although it is true that the disputed account was *passed* December 16, and passed upon an exhibit of sundry releases, *including the release now in question*, and that this last mentioned release, when so exhibited, bore the signatures not only of myself personally, and of Mrs. Brooks, and Mr. William Boott, but also of Mr. and Mrs. Wells, and of "J. A. Lowell, for himself and *Edward Brooks*, trustees under the will of Kirk Boott," it is material for the reader to know that neither Judge Warren, nor myself, nor Mr. William Boott, nor any person in our behalf, was *present* in the probate court, when that transaction occurred. This does not rest on my statement. I cite Judge Warren's nearly contemporaneous letter, of December 19, 1844, heretofore printed. He says, expressly, "*No party appeared in the probate court* to question Mr. J. W. Boott's account; and, so far as I *heard*, no examination of vouchers has been had or sought." [Ante, p. 140.] Mr. Lowell himself also says, incidentally, respecting the accounts, "*no one appearing*, to object to them." [Ante, p. 627.]

I next desire the reader to note, that Mr. Charles G. Loring, also, was *not present* on that occasion, although he had been, all along, acting as the counsel of Mr. Boott and Mr. Lowell, and was himself to be the new trustee. He does not appear to have been connected with the transactions of December 16. He had merely agreed, soon after the receipt of my letter of December 11, to accept an appointment to the trust; but he did nothing, personally, in the business, until *after* the date of the transactions now complained of. The proof of his absence from the probate court of the sixteenth of December is, that the application, in his name, made and dated on that day, and stating "*that he has been*

requested by the parties in interest to act as such trustee, and that he accepts of said trust, and is ready to give bond according to law," is signed,—not by himself, but—"Charles Greely Loring, *by J. A. Lowell.*" This appears by the original paper on the files of the probate office. Mr. Loring's bond, which was, of course, signed by himself, as well as by Mr. John A. Lowell, the sole surety, it is true, *bears date* on the same day. But, though so *dated*, to correspond with the record of his appointment, it was, no doubt, *executed* on a *subsequent day*, at any rate, *not in the probate court*, but at his own office; since it is witnessed by two gentlemen, (Messrs. C. W. Loring and Seth Webb, jr.,) belonging to that office, and not by the register or clerks of the probate office, as is usual with bonds executed there.

Nobody, but Mr. Lowell, appears to have had any hand in the needful preparations, (except the mere drafting of legal papers,) for a transfer of the trust.

On the same sixteenth of December, Messrs. G. A. Goddard, L. Stanwood, and J. Pickering Putnam appear to have been appointed appraisers, two of these gentlemen being at the time clerks of Mr. Lowell. But if these persons had been present in the probate court on that day, they would have been *then* sworn, before the *judge*, or *register*, whereas they were, in fact, sworn December 19, as the record shows, *before "J. A. Lowell, Justice of the Peace;"* and their appraisement was not returned into the probate court, until December 23. [B. App. p. 54.]

The deeds of transfer of the manufacturing stock to the new trustee are, moreover, dated December 21, and were executed by Mr. Boott, apparently in the presence of *Mr. Lowell, alone.* At least, it seems so, from the following certificate concerning the seventy-one Merrimack shares.

CERTIFICATE OF MR. WILLIAM G. WISE.

LOWELL, MAY 18, 1850.

DEAR SIR,

Your favor of yesterday was duly at hand. The deed of seventy-one shares from J. W. Boott executor, to C. G. Loring, trustee, is dated 21st December, 1844.

Witness, John A. Lowell.

Acknowledged before John A. Lowell, as Justice of the Peace.

Respectfully,

Your ob't serv't,

WM. G. WISE.

EDWARD BROOKS, Esq., Boston.

It may be fairly inferred that the deeds of the thirty-nine shares of Boston stock were made at this same time, in the same presence; and the deed of the stable in Bowdoin-street appears, by the record, to have been executed on Saturday, December 21, *in the presence of Mr. Lowell, and of his clerk, Mr. Putnam.* They are the only attesting witnesses to that deed, and it was acknowledged on the same day before "*J. A. Lowell, Justice of the Peace;*" but not put on record till December 23.

December 23 is also the date of the executor's *third* and *final* account, and the day, on which it was passed and allowed in the probate court. [B. App. pp. 52, 53.] In this account he charges himself with the balance of his account of November 18, and with certain dividends subsequently received, and with the proceeds of the mansion-house, and asks to be allowed for the property transferred to the new trustee, after deducting the "cash balance," claimed upon the former account as "due to the executor."

Monday, the twenty-third of December, therefore, was the day, on which the business of the compromise was consummated in the probate court, and the day, on which the transfers of property probably took effect by delivery and record, notwithstanding that the papers, relating to the appointment of the new trustee, and to the nomination of appraisers, as well as the decree allowing the disputed account, are dated December 16. That part of the business, only, ap-

pears to have been acted upon by the judge of probate on this last mentioned day, nobody, (besides the register and his clerks,) being present before him, that I can discover, except Mr. Boott and Mr. Lowell. In short, Mr. Lowell, on this occasion, appears to fill to perfection the part of that "veritable Mephistophiles," to use his own phrase, [L. p. 22.] which he says I represent him to be,—managing, himself, in his own way, the whole business, for all parties, up to the twenty-third day of December. On that day, the new trustee, Mr. Loring, first makes *his* appearance in the probate office, by returning an inventory, and signing his approval to the executor's third and final account. [B. App. pp. 53--5.] The previous account, passed on the sixteenth, must have been passed, therefore, entirely upon *Mr. Lowell's* representation that it was agreed to by all parties, and upon an exhibit to the judge of releases, which appeared to embrace all parties adversely interested; at least, the right of the Kirk Boott family being vested in Mr. Lowell and myself as *joint* trustees, it appeared, upon the *face* of the release, that Mr. Lowell had signed it *for me*, as well as for himself; and it might be fairly inferred that this was done *with my assent*, and *in my presence*; since Hugh Mathews, the witness to my own private signature, was, *apparently*, the witness, also, to the signature of "*J. A. Lowell, for himself and Edward Brooks*, trustees under the will of Kirk Boott." Through an unsuspicious negligence, not very uncommon in the witnessing of papers, there was nothing to restrict his certificate of attestation to one signature, rather than another; there was but one date to the paper; and, so far as the paper showed, it appeared to have been signed by all the persons who signed it, at one and the same time, although, in truth, no one but Mrs. Brooks and myself, had signed in the presence of Hugh Mathews.

Mr. J. Wright Boott, it will be observed, too, knew no more about this part of the business, (the release,) than the judge of probate did. He had held no personal communication, either with me or with my counsel, and had no agency

in obtaining signatures, except through Mr. Lowell. How critically the releases were examined by the judge, I do not know; probably they were barely glanced at. The statement of such a witness, accompanied by the mere offer of papers to prove it, was perhaps, enough to satisfy him. At any rate, Mr. Lowell must have caused the judge to understand that the releases embraced every party representing a legal interest, and that *the "trustees under the will of Kirk Boott," in particular, assented, in that capacity, to the account*; since, otherwise, it is quite incredible that the judge should have allowed such an account to pass *sub silentio*, against minors not represented, without even an ordinary examination of vouchers. Indeed, the "Reply" says,—*"This paper [the release] was exhibited to the judge of probate, in evidence that the opposition to the passage of the accounts, formerly notified to him, was withdrawn, and the accounts were accordingly on that day passed."* But, although the paper is said to have been thus *shown* to the judge, for the purpose avowed by Mr. Lowell, it seems that its possession was not parted with for an instant; at least it was not deposited in the probate office, for record or examination, at that time; since the "Reply" tells us, that "*Mr. Boott, the next week, [December 23,] when he presented his third account, which was one of mere form, left all his discharges for record.*" [Ante, p. 626.]

Why Mr. Lowell should call that third account "one of mere *form*," I do not well see; since it charged the executor with nearly \$30,000 of *additional* property, and claimed an allowance for the *transfer* of *all* the property to the new trustee. [B. App. p. 52.] This transfer of the property to a new trustee was, as before remarked, the very *point* of the compromise; and the paper, which Mr. Lowell had so considerately signed in my behalf, it seems, was not *left for record*, so that it could be examined by any curious party, until this point had been reached,—that is, not until the *whole* business of the probate office was *finished*,—A WEEK AFTER *the passing of the second account ON THE FAITH OF THAT PAPER.*

It further appears, by the following receipt on file in the probate office, that, very soon after Mr. J. Wright Boott's death, all the original releases were, again, withdrawn from the files, and taken possession of by Mr. Lowell :—

RECEIPT.

" Boston, March 31, 1845. Received of the Register of Probate the following papers relating to the settlement of the accounts of J. W. Boott, executor of Kirk Boott :—

Release from Mary Boott, widow, dated London, May 29, 1844.

" " Francis Boott, M. D., " " " "

" " Edward and Eliza Brooks,

" " Frances Wells,

" " William Boott,

" " William Wells,

" " J. A. Lowell for self, and Edward Brooks, Trustees under the will of Kirk Boott,

} Dated December
9, 1844.

J. A. LOWELL,

by J. PICKERING PUTNAM."

Hence, it was only from the books of record, in which copies of the releases had been preserved, that, when an occasion arose, which led me, three years after the event, to obtain a copy of some of those records, I became accidentally acquainted with the fact of the use, which Mr. Lowell had made of my name as trustee.

But to return to the time of these transactions, and to the point of *authority*, express or implied. Mr. Lowell's suggestion to Judge Warren, in his letter of December 6, requesting him to prepare a suitable discharge, is, "I think it would be well, if it were *so* drafted that Mr. and Mrs. Wells, and the *other members of the family here*, could unite in it." That is, those members of the family, who were *not* Judge Warren's *clients*. It was accordingly drawn as we have seen :—"We the parties *executing this instrument*, heirs at law, and *representing heirs at law*, of Kirk Boott, &c.," "in consideration of one dollar," &c. "remise, release and discharge him the said John W. Boott, his heirs," &c. "from all claims and demands." That is, it was drafted,

by Mr. Lowell's request, made on the sixth of December, in a form suitable to embrace, not only Mr. and Mrs. Brooks, as heirs at law, but, also, Edward Brooks and John A. Lowell, trustees, as *representing, jointly*, other heirs at law. In that form it was sent to me, on or about the ninth of December, and was executed by me, *for myself only*, in respect of *my individual interest*, and by Mrs. Brooks, for herself, and by Mr. William Boott, for himself. So executed, it was handed by Judge Warren to Mr. Lowell, probably on the eleventh of December. This was, of itself, distinct notice to Mr. Lowell that I did *not intend* to execute it in my capacity of *trustee*; since every man of business well understands, that, when he intends to execute a deed *as trustee*, he must say so, in express terms, either by writing the word "trustee" after his private signature, or by describing himself, in the instrument, as acting in that capacity; especially if he possesses a private interest of his own, to which his simple signature might otherwise relate.

For what purpose was the paper handed to Mr. Lowell? Simply that he might examine its sufficiency, and obtain the signatures of such *other* proper parties as might *choose* to sign it. But he "*was not to use it*," (that is, to pass an account by it,) without the previous authority of Judge Warren, as he himself states.

He says, indeed, that *upon the receipt of my letter* of December 11, (that is the letter nominating Mr. Loring,) "I [Mr. Lowell,] immediately showed this letter to Judge Warren, and *procured his consent to make use* of the release he had left with me." But, supposing that to be true, *how* was he "*to make use*" of it? Does he mean to have it understood that Judge Warren authorized him to *alter* my own signature, or to sign it for me in some *new* right or capacity? Judge Warren, himself, possessed no such power. The utmost authority, which he could, possibly, have conferred on Mr. Lowell, was to deliver that paper to Mr. J. Wright Boott, as *our* deed,—the deed of those parties, whom Judge Warren was acting for, and precisely as they had chosen to sign

it,—*whenever the object of the compromise should be secured by a proper transfer of the property into the hands of a new trustee.* In the mean time, Mr. Lowell was at liberty to obtain the signatures of such other proper parties, including “the trustees under the will of Kirk Boott,” as might please to sign the paper; and he might deliver it as *their* deed, also, if *they* should authorize him to do so.

What was, in fact, done with it? Mr. Lowell, having the paper in his possession, without my signature as trustee, first obtained the signatures of Mr. and Mrs. Wells, (probably at the same time that he obtained their signatures to the deed of the mansion-house,) and he next *signed it*, without consulting me, “*for himself and Edward Brooks, trustees.*” This would seem, from the date of the acknowledgement of the last mentioned deed, most likely to have happened *on* the sixteenth of December, and, of course, *just before* the presentation of the account. But, whenever it may have happened, it is not pretended that he ever *exhibited* the release, *so signed*, or gave *notice* of the fact that *he had so signed it*, either to me or to Judge Warren! On the contrary, he simply sent me, on the same sixteenth of December, the deed of the *mansion-house*, executed by Mr. and Mrs. Wells, in order that Mrs. Brooks and myself might sign *that* deed, *without any notice whatever that he had signed the release in my behalf as trustee, and without any notice of the passage of the account on that very morning, or of any step taken towards it!*

On the *nineteenth* of December, (the release being still in Mr. Lowell’s pocket, or at least not on the files of the probate office,) Judge Warren is *informed* that the business is all *done*; and, having perfect confidence in the gentleman with whom he dealt, he would naturally suppose that it had been done with entire regularity, under the sanction and immediate superintendence of the opposite counsel, Mr. Charles G. Loring. Accordingly, on that day, (December 19,) Judge Warren, being so informed, writes to me, that, “as a consequence, [of Mr. Lowell’s acceding to our proposition of compromise,]

Mr. B. has resigned the trust, Mr. Loring has been appointed trustee, and *property to the amount of one hundred thousand dollars or more*, besides the purchase-money of the house, (\$46,000) *has been transferred to him.*" [Ante, p. 140.]

I say that Judge Warren was *so informed by somebody*, because it appears by his letter, that he was *not present* in the probate office, and there is no pretence that he was present *at the transfer* of the property. Of course, all this must have been stated by him upon mere information. Whence derived, except from Mr. Lowell? The information, as it turns out, was *not in fact true* on the day it was given; for we have just seen that the transfer of property, which was the whole essence of the compromise, *had not been made at the date of Judge Warren's letter*, (December 19,) since the deeds are *dated* December 21, and the business of the probate office was not *completed* till December 23. Nevertheless, I confided in that statement from Judge Warren, as he did in the statement of his informant; and we looked no further; and if we had, we should have found nothing on file in the probate office, all the important papers being at that time in Mr. Lowell's pocket. He had merely *shown* them to the judge, in proof of his statement, and had immediately withdrawn them again. As for me, being told by my counsel that the business was all done, the *manner*, in which it was done, I supposed at the time to be immaterial. It was enough for me that I was not called upon to act, or to appear to act, for any body but myself and wife, which was the only point I had made relative to the manner of closing the business. But, since the surrender of the property into the hands of a new trustee was *my sole object*, the expectation, when the release, with my signature to it, was handed to Mr. Lowell, must, necessarily, have been, that Mr. Boott's resignation, Mr. Loring's appointment, and the *transfer of the property*, would be all effected on the same day as one contemporaneous act; and confidence was reposed in Mr. Lowell that all this should be secured, before my release was to be *used* as an effective instrument to dis-

charge Mr. Boott. It manifestly could not have been intended that the disputed account should first be passed, and that the executor should be discharged of all accountability, upon the faith of my release, and that the delivery of the property to a new trustee, which was the sole consideration for my release, should be left to the contingencies of a future day, in the hands of a man, who would thus have got his discharge beforehand, and whom I considered to be in a state of positive derangement.

What use Mr. Lowell made of that confidence, and how Judge Warren, as well as Edward Brooks, was misled, the reader has now seen. However, since the property was, in fact, handed over a few days after, no harm came, I admit, from this particular deception; and the only effect of the premature action in the probate court of December 16, and of the withdrawal of the papers, was to preclude all possibility of my knowing any thing, meanwhile, of the use made of my name as trustee, if I had happened to look for it.

I have already remarked, that my transmission of the release to Mr. Lowell, with my personal signature, only, affixed to it, and no signature in my capacity of trustee, was notice enough to him, that I did not intend, *by any act of mine*, to bind the interests of that trust to the compromise. But let not the reader suppose, that I left my intention to rest upon that *implied* notice, alone. Far from it. *I held a conversation with Mr. Lowell on this very point*, and then distinctly informed him that I could not, and should not, undertake to act as trustee for the minor children of Mr. Kirk Boott, in releasing unknown claims, but, if a release from them was found to stand in the way of a settlement, I would willingly resign my trust, and leave it to others to judge of the propriety, and take the responsibility, of that act. The date of that conversation I can not fix more nearly than somewhere between December 11, and December 16; but, the material fact, that there was such a conversation, the reader will observe, is distinctly averred in my former statement, [Ante, p. 623] and is *not denied* in the "Reply."

The allegation is simply *evaded*, by passing it over without comment, and causing the reader to imbibe a false impression, that the *only* notice from me, on this subject, was my letter of December 17. The reader will also observe, that this previous conversation is alluded to in the opening of my letter of December 17, printed below, which letter was intended to put in writing what I had already in substance said, so that there might be no mistake. The first line of the letter, it will be seen, positively proves the fact, tacitly admitted by Mr. Lowell, that there had been *some* conversation respecting a paper to be signed by us *as trustees*.

This letter, it will be remembered, accompanied the deed of the mansion-house, which I returned, executed, on the morning of December 17, and was as follows:—

LETTER FROM EDWARD BROOKS TO J. A. LOWELL.

"DECEMBER 17, 1844.

"MY DEAR SIR,—

I send you the deed executed, as you requested. You spoke to me of another deed, or paper, *to be signed by you and myself, as trustees*, under the will of our late friend, Kirk Boott, of Lowell.

It is my intention *immediately to resign that trust*, and I should much prefer that the deed should be signed by the *new trustee*, or by *yourself alone*.

The steps taken by *myself and my wife*, in this matter, *have been based on the idea of a compromise for the sake of peace*.

As a trustee, particularly where there is a variance between the cestui que trusts and the trustee, *I am very differently situated*.

I am *not prepared* to say, that, on a full, fair and just statement of accounts, *the executor is entitled to claim a balance of \$25,000*.

In my own case, I have a right to *waive* any claim I may be supposed to have. *Not so as trustee*.

Presuming that *you* have no doubt as to the equity of the claim made by the executor, *you can sign the deed without scruple*.

I shall send in *my resignation of the trust* to-day or to-morrow, and as this will make a settlement of accounts necessary, I shall rely on you to have it in readiness for the *next probate day*.

Yours, very truly,

EDWARD BROOKS."

"J. A. LOWELL, Esq."

This offer of resignation, lest my scruple should obstruct a settlement of the executor's account, in the probate court,

is conclusive proof, if any were yet wanting, that I was *not aware*, at the time of the writing of the letter, that the account was *already settled*, and that, to effect it, *my name as trustee had been actually signed to a release!* Yet the whole substance of the "Reply," on this point, consists in showing that the *date* of the probate decree is December 16, and that the *date* of my letter is December 17. What answer is this to my complaint? None in the world, except as it leads the reader to infer a mere falsehood; and this is more distinctly conveyed, when it is said, "Yet he [Brooks] now pretends that his letter of December 17th was a *seasonable notice, &c.*"

[Ante, p. 626.]

My intention of resignation was removed in consequence of an interview with Mr. Lowell, immediately following his receipt of my letter. Such an interview he admits, in the passage, which I now extract. He says, indeed, that my letter "had no reference whatever to any *release*, but to a *deed of the estate* in Bowdoin Square, which required our joint signature; which signature Mr. Brooks, in that letter, very capriciously as it seemed to me, refused on his part." But, he adds, "*I immediately went to his office, and persuaded him to sign it.*" [L. p. 193.] Now, my letter, it will be seen, referred to the paper, whatever it was, which had been *previously spoken of* by Mr. Lowell, as a paper *requiring our joint signatures*; and, in reference to such a paper, I had, verbally, given to Mr. Lowell distinct notice, now repeated in my letter, that I should sign nothing, as trustee, to commit my *cestui que trusts* to a discharge of their claims on the executor. *The release* was a paper, answering this description. To bind the trust, it required our *joint signatures*, as trustees; or, at least, a signature *in behalf of each trustee*, either by his *own hand* or by that of an *authorized agent*. But the paper, which Mr. Lowell brought to me, and which, he now says, was the paper he had referred to in our conversation, turned out to be only a draft of a *deed of the mansion-house* from the trustees under the will of Kirk Boott to William Lawrence, and contained

no release, express or implied, of claims on the executor. It was merely *an assent to the sale* of that estate, in behalf of the heirs, whom we, jointly, represented ; to which, now that it was arranged that the proceeds should go into the hands of a safe trustee, I saw no objection.

I repeated my determination, however, at this interview, *not to release any claims in behalf of those heirs* ; and the answer was, "*It will not be necessary*;"—and this answer was *unaccompanied by any notice* of the fact, that the account was already passed, and the release already signed, in the manner above described ! The "Reply" pretends no such notice ; but it leaves the reader to *infer*, from the tenor of its statements, that I must, of course, have been acquainted with the transactions in the probate court, and this, the evidence, above detailed, proves was not the fact. The "Reply" also admits, by endeavouring to excuse, the answer, "*It will not be necessary.*" The remark is, that I printed the passage "*emphasizing those words to intimate, I [Mr. Lowell] suppose, some deception on my part,—whereas, if I had made any such remark, it would have been the most natural one in the world, as the account had been passed the day before!*"

This may have all been very natural to Mr. Lowell ; of that I shall not undertake to judge ; and, whether there was "*some deception*" or not in this matter, the reader can judge for himself.

Mr. Lowell, however, expressed hopes that I would not resign ; and, seeing that the deed, I was asked to sign, was in itself unobjectionable, and understanding from what was said that no release of claims, by the trustees, would be required, I signed the deed, and, after consideration, concluded not to resign my trust, supposing that the interest of that trust had been in no way committed by any positive act. I knew it had not been committed by any act of mine ; and it never entered my head to imagine that my co-trustee should have dared, without my consent or knowledge, to sign my name as trustee to the release, or even that he had under-

taken, or would undertake, after what had passed between us, to sign his own name, with a view of binding the trust, without my concurrence.

The next notice I had, respecting the progress of affairs, was from Judge Warren, in his letter of December 19, to the effect that the business was all happily concluded; and, without inquiring when, where, or how, I supposed that it might have been transacted, as such business then very commonly was, in a private audience, before the judge of probate, at some time convenient to himself and the parties, in lieu of a formal hearing on a regular court day; and that no release in behalf of the Kirk Boott family had been found necessary to the passage of the executor's account, which was all I cared about in the matter.

The reader now has the facts before him, and I have but few remarks to make upon the character of the "Reply" to this part of my case.

That my name was signed, in the manner above stated, without my consent or knowledge, and for the purpose of passing the account, Mr. Lowell does not deny. How, then, does he get over the fact? To most men this would seem no easy task;—but Mr. Lowell makes very light of it. He even affects to turn my complaint into ridicule, as a mere freak of captiousness, quite without excuse. "Why," says Mr. Lowell, in effect, "did I not write a letter to Mr. Brooks on the tenth of December, of which I show to the reader the *first* sentence,—a sentence declaring my great and disinterested love of the whole Boott family, and my sincere desire to heal their dissensions,—and the *residue* of which letter, I assure the reader, contained my proposition for a compromise? And did not Mr. Brooks write me an answer, which I show to the reader in full, and in which there is 'not one word, be it observed, about any reluctance to consent to this arrangement as joint trustee with me under the will of Mr. Kirk Boott?' "This [signing of his name] I never doubted that I was fully authorized to do by MR BROOKS'S NOTE above cited"!!

Now, what possible authority, I ask, in the name of truth, could Mr. Lowell have imagined to have been thereby conveyed to him to sign *for me*, a paper *not alluded to either in his letter or mine?*—a paper, too, *which I had myself already signed as I meant to sign it*, and which I had purposely omitted to sign *as trustee* for others, with *express notice* to him of my intention in that behalf? If Mr. Lowell really believed that such an authority was conveyed *by my assent to his letter*, why did he print *my letter only* as the evidence of that assent, and *omit to print his own letter*, (except one immaterial sentence,) thereby precluding the reader from seeing for himself what was the proposition assented to, and leading him to infer from the whole statement, that the tenor of his proposal was *totally different* from any thing, which the letter actually contains, or suggests?

However, this letter of mine, connected with his, is Mr. Lowell's *sole* alleged authority, such as it is; and in virtue of that authority he takes the paper, whensoever it may have come to his possession, carries it to Cambridge, procures the additional signatures of Mr. and Mrs. Wells, and then, without notice to me, signs it himself, not only for himself as *one of the trustees*, but, expressly, *for EDWARD BROOKS also, as the other trustee*, under the will of Kirk Boott, being, as he says, “in the usual form of such signature,” [L. p. 192.] and all standing, apparently, under the attestation of my own servant, Hugh Mathews.

“*The usual form of such signature!*” Well,—that may be true enough. No one better understands the forms of business than Mr. Lowell. I presume that, whenever one man writes another's name without authority, he takes care to do it in what he supposes to be the “usual form of such signature.” I have never made the slightest objection to the *form*, in which Mr. Lowell signed my name. The only complaint in the world, I have to make, is, that he should have signed it at all, without my consent given or asked, without authority express or implied, and that he should have done it secretly, without my knowledge at the

time, and without communicating it to me afterwards, and altogether against my known will on that subject, and that he should presume to treat the fact, when discovered, as a matter of no moment.

Let us see how Mr. Lowell deals with so grave a charge. As indisputable evidence of my dissent, at the time, to all action in my name, as trustee, for others, in this voluntary release of claims, I formerly printed my letter of December 17, 1844, now reprinted above. This Mr. Lowell admits he received, but affects to treat with extreme contempt, and to turn the circumstance of the *date* of the letter against me, as if it made the matter merely ridiculous;—for I have invariably observed of Mr. Lowell, in all the dealings I have ever had with him, that he assumes a tone, confident, presumptuous, and overbearing, just in proportion to the badness of his cause. Accordingly, we find him, now, using the following language. “He [Mr. Brooks] now pretends that *this letter* of December 17, was a *seasonable notice* not to sign on his behalf a release, which was exhibited at the probate court, *signed by all the parties interested*, on the 16th! *This contempt for chronology* is, as I have already had occasion to show, *characteristic of Mr. Brooks’s mind.*” [L. p. 193.] Now observe the exact phraseology here, because it betrays something, which I consider very characteristic of Mr. Lowell’s mind. Without once alluding to the previous conversations I had held with him to the same effect, he gives out, by indirection, that my *case of notice* rests, *solely*, on that letter of December 17. Having tacitly assumed that absolute falsehood, he says, “the release was *exhibited* at the probate court, *signed by all the parties interested*, on the 16th”—*one day before* the date of my letter. This may be all true,—except that I deny that *my signature, as one of the trustees* under the will of the late Kirk Boott, is upon that paper at all,—and if true, it would seem, at first blush, to all persons ignorant of the circumstances, to be a pretty decisive answer. Every reader, who sees that statement without further explanation, naturally says to himself,—“If

the paper was really exhibited, in open court, the day before the date of Mr. Brooks's letter, Mr. Brooks must have had notice of it ; for he must have been present, by himself or his counsel, and should have objected at the time, instead of writing a letter the *next day*, and endeavouring to do away the effect of what had been *done* by offering to resign his trust."

I have already proved that this idea is unfounded in fact ; but, since it may not be so well known to every reader, as it is to those who have business in our courts, it may be proper to add, that, when a settlement is agreed upon out of court, nothing is more common than for all the papers to be handed to the counsel, or agent, of one of the parties, to be exhibited and filed when it shall suit his convenience, provided he be a person, in whom implicit confidence may be reposed that every thing will be rightly done, according to the agreement. This it was, which happened here. The compromise had been agreed upon ; several papers were yet to be prepared and executed, to carry it into full effect ; this paper, already signed by some, was put into Mr. Lowell's hands that he might obtain the signature of others ; and all the papers were left with him, by me and by my counsel, as we should have left them in the hands of any respectable man, occupying the position of Mr. Lowell, and believed to be an accurate man of business, in perfect security that the right use, and no other, would be made of them at the right time and no other.

The deed of the mansion-house,—the most pressing step in the whole business for Mr. Boott and Mr. Lowell,—was not sent to Mr. Lowell, executed, as appears by my letter, till the morning of the seventeenth. The transfer of the property to the new trustee,—the only step material to my side of the compromise,—was not made certainly before the twenty-first, nor was the business completed in the probate court till the twenty-third. Not, until that day, was the *final* account presented by Mr. Boott, without which the business could not be regularly closed. In such a matter nothing was

done till all was done. The releases, in particular, were to take effect *when the transfer of property occurred*, or, at the instant before, when the accounts were to be passed, and the property was, thereupon, to change hands. All this preparation was, at the date of my letter, supposed to be yet in progress.

But what does Mr. Lowell? Immediately upon the agreement's being made, and before it was *possible* that it should be executed for want of needful preparation, having the half-signed release in his hand, he completes it in the manner above described, without notice to me; and then, without waiting for other indispensable parts of the transaction to be in readiness, *so that the property might be transferred*, he hastens, with the release, *so signed*, to the first probate court, *in the company of Mr. Boott alone*,—informs the judge that the parties have agreed to the settlement of that pending account,—*exhibits this release*, and the other releases, *in proof*,—*obtains a decree allowing the account on the faith of that statement and evidence*,—and then takes away the releases again, to keep them in his own pocket *until* the other preparations can be made at leisure, and *until* the business can be finished at some *subsequent* probate court, so that the settlement of accounts may be beyond all danger of defeat, and the manner, in which it was effected, beyond all probability of discovery.

In the mean time, I, confiding in Mr. Lowell, and in the regular progress of the thing towards completion, had given myself no further thought about the matter. I had no notice of the movement in the probate court; no opportunity to be present; neither had my counsel. For myself, indeed, I never knew that Mr. Boott's account had been passed on the sixteenth, until I observed that to be the date of the probate record, when preparing my former pamphlet; and, although I then thought it strange that the account should have been actually *passed* on that day, when the surrender of the property to the new trustee did not appear to have been made till *several days afterwards*, nor the subsequent

account to have been passed till *the twenty-third*, while Judge Warren's letter, telling me that the business was actually finished, appeared to be dated on the *nineteenth*, still, suspecting no wrong, I thought nothing of these discrepancies, though I could not account for them, until I discovered this extraordinary fact concerning the signature to the release.

But my letter of the seventeenth was *not my first notice* to Mr. Lowell of my refusal to join in a release as trustee. That I have abundantly shown, not only by my own statement, but by Mr. Lowell's tacit admission. Mr. Lowell well knew my objection *before the sixteenth*. On that day, he sent me the deed of the house, to be signed by myself and Mrs. Brooks and Mr. William Boott; and, on returning it, signed, on the morning of the seventeenth, I, very naturally, took the occasion to *repeat*, more formally, the grounds of my objection to acting in this business, in my capacity of trustee; but, that I might not thereby stand in the way of the settlement, nor thwart Mr. Lowell's known desire that all concerned should join in a release, I offered and proposed, if he were content to take the responsibility of acting for the Kirk Boott family entirely upon himself, to resign my trust. What follows? Mr. Lowell comes to see me, and brings with him a draft of a deed, representing it to be the identical paper, requiring the signatures of himself and myself as co-trustees, to which he had, in our former conversation, referred. I insist on my objection to signing as trustee. He asks me to read the paper. I do so, and find it to be a mere deed of conveyance to Mr. Lawrence of our interest, as trustees, in the mansion-house, without a release, express or implied, of any claim on Mr. Boott. I give him to understand that I have no objection to signing *that* deed, considering the sale a fair one, and that the proceeds would go into safe hands, but again repeat that I can not, and will not, agree to sign, in that capacity, any *release* of claims on Mr. Boott. To this Mr. Lowell, saying nothing of what had happened, simply replies,—“It will not be necessary!!”

Little did I dream, when he told me this in his most artless

manner, that he was only saying, in effect,—“ You need not trouble yourself, my dear Sir, about signing, or not signing, any such paper as that,—because *I have already done it for you*”! I understood him, of course, literally, as he meant I should understand, that no act of the trustees was judged to be needful.

And now, having seen what all the facts are,—none of them really denied by Mr. Lowell,—let us take the best side of his own story.

His substantial plea comes to this : That he signed the release for me in good faith, and “ in the usual form of such signature,” supposing that I wished or expected him to do so, as a matter of course. And yet, is it not wonderful, if he was so perfectly sure of my consent, that he should not have preferred to get my own name, so easily done, to a paper so very important as this proves to have been for himself personally? Am I not justified in saying that it was important to him, personally, after all we have seen about the connexion of Boott & Lowell with the subject matter of this account ? to say nothing of its securing full payment of a debt due to himself, for large sums of money lent, as trustee, upon questionable security.

But we will suppose that he did so sign it for me, honestly and in good faith, and that he carried it into the probate court, on the sixteenth day of December, not dreaming that I could have the least objection to releasing, as trustee, claims similar to those, which I had consented to release for myself personally. *On the very next day*, he gets a note from me, *about which there can be no misapprehension*, positively declining to sign any such paper in that capacity. Supposing, I say, that his intentions were all fair and open, and that he had acted under a mere mistake, what should he have done on the receipt of such a note? Would not any other gentleman of his standing and reputation have come, or written, to me, immediately, and said, “ I am truly sorry for what has happened ; I have already put your name as trustee to that release, presuming you had authorized me to do

so, or at least that you would have no objection. Meaning to be prompt in this matter, I carried it, yesterday, to the judge of probate, and the executor's account was, unfortunately, passed, upon the faith of it. But this, after all, is rather a matter of form ; the decree has not yet been recorded ; the release has not been filed ; the property, I am happy to say, has not been delivered, and other needful parts of the arrangement are still incomplete ; so that a mistake, in this hasty proceeding, is yet entirely open to be corrected ; and I am now ready to do whatever you may require, to set matters right."

I ask every fair-minded man if such would not have been his own course ? But, what does Mr. Lowell ? He pockets my letter,—says nothing in reply,—keeps close,—runs for luck,—counting upon my confidence in him, and upon the improbability of my searching the records of the probate office, and upon the greater improbability of my calling for absent papers,—breathes not a syllable of his having put my name to the release, nor of his having thereby got the account already passed,—but, on the contrary, brings me another paper to sign as trustee, to which I see no objection,—and, when I remind him that I cannot sign a *release* as trustee, merely says, "Oh, that will not be necessary!"—and leaves me to find out, *three years and a half after*, that he had actually done for me that, which I had expressly declared, both verbally and in writing, my fixed determination that I would never do. Thus, in spite of every precaution, I stand recorded in the probate office, apparently assenting to a release of claims, held only in trust, by Mr. Lowell's signature in my behalf, written, as it seems by the paper, in the presence of my own house-servant, directly under my own personal signature, and witnessed by him.

On making the discovery, I write to Mr. Lowell for an explanation. This he treats with "silent contempt," refusing all answer upon the subject till he is dragged out, before the readers of my pamphlet, in print ; and then, he has the consummate assurance to publish an answer holding up

the whole affair to general ridicule, upon the ground of its being a mere foolish mistake of mine,—a silly anachronism,—because, forsooth, my letter, repeating a verbal notice of several days before, was dated on the seventeenth, and he had, without notice to me, procured the account to be passed on the sixteenth !

What such a release, and such a passing of an account, may be good for, I shall not, at this moment, undertake to determine ; but I desire to publish to all who read these pages, that my present judgement, respecting the propriety of my joining in that release *as trustee*, is, still, what it then was ; that, if the matter were to do over again, I should refuse, now, as I did then, to be a party to any such act ; and, further, I desire to publish, that this signature, *affixed by Mr. Lowell*, and purporting to be affixed *for me*, is NOT MY SIGNATURE, nor evidence of my assent, in any sense of the term, and was NEVER AUTHORIZED BY ME, expressly or impliedly, and that Mr. Lowell KNEW it was not when he so signed ;—and, there I leave it.

One word of explanation, however, as to my own course, seems needful.

Mr. Lowell, in addition to the imputed anachronism, indulges himself in some further pleasantry, as follows :—

“I will not dwell on the absurdity of a trustee allowing accounts that he believes to be fictitious to be passed, no one appearing to object to them, and the next day refusing on the plea of conscience to sign merely *pro forma* discharges.” [Ante, p. 627.]

The ideas of the “Reply,” concerning form and substance in the execution of a trust, are so different from mine, that I shall not stop to discuss them. But, in respect to my imputed neglect of duty, in allowing the account to be passed without interposing a positive objection, in behalf of my trust, it might be answer enough to show, as I have, that the fact of its passage, *at that time*, and *in that manner*, was concealed from me by Mr. Lowell until the deed was done. It was done while I supposed preparation was yet making for doing it,

with full opportunity for all parties to object, who had not already agreed to the settlement. But further, I would remark, that an allowance of the account by a judge of probate, upon his judicial responsibility, was one thing ; a voluntary release of claims on the executor for all matters, whether in the account or out of it, by a party interested, was quite another. The question is, whether I ought to have joined, as trustee, in such a release. Reason enough against it, has, I trust, been made to appear. I did not, indeed, then know all, which I know now ; but I knew, well enough, or, at least, had reason enough to believe, that Mr. J. Wright Boott was, in equity, largely indebted to his father's estate ; in other words, that he had received more of that estate than the account charged him with ; how much more I did not know. I believed, also, it is true, that Mr. Kirk Boott had been allowed \$20,000, as the dividend due to him from the estate. But I did not positively *know* that ; nor did I know that a much larger sum was not really due to him. What the effect might be of former transactions, including the discharge of 1833, to which Mr. Kirk Boott was a party, if all the real facts of the case should be discovered, and what the effect of a decree allowing an account, which entirely omits to charge the accounting party with certain sums, not mentioned, nor referred to, in it,—all this it was not my province to assume to determine for any body but myself. For the sake of quieting dissensions, of effecting a settlement important to the peace of the family, and of securing, at the same time, the safety of a remnant of family property, I was willing to compromise, for myself, by the most formal and effectual release that counsel could devise, all claims against Mr. Boott, belonging to me in my wife's right, and she was willing to join me in that act. I was not willing, and, indeed, had no right, in my own judgement, to yield up, *in the dark*, any claim, legal or equitable, that might remain to the minors, for whom I was a trustee. I preferred to resign the trust, and leave that responsibility to others, if they chose to assume it.

What would Mr. Lowell have said, had I signed the release as trustee? Even now, he says there was no compromise. But with how much more colour of plausibility would he have said so then? How would he have borne down upon me in that case? "See," he would have said, "the consistency and fairness of this Mr. Brooks. He pretends that the allowance of the account was a compromise; and, yet, he signed a *full release* of all claims, not merely for himself, but *as trustee*, and in behalf of others, some of them *minors*, whose claims, if they had any, he knew he had no right to abandon, or to surrender without the smallest pecuniary consideration."

What could I have answered to this? I should have had no more to say for myself than Mr. Lowell has to say for himself, in having usurped that office, and in having undertaken to sign my name, secretly, to a release, which, it now appears, was to accrue in part to his own benefit,—thus, not only violating his faith to me as a co-trustee, but his duties, in my judgement, to the wards, whose interests, we were equally bound to protect.

For my part, I saw no course, for me, but to resign my trust, if such a release was to be required. Would that have been a culpable dereliction of duty? Perhaps I might have been blameable for a weakness, even in that. But, the case was, that my co-trustee, *professing a knowledge*, (as I shall presently prove,) upon the subject of the old partnership transactions and family accounts, which I did not pretend to possess, and *declaring a confidence*, which I could not feel, in the *truth* of the executor's account, was urging me to adopt it. *He* was willing, apparently, to take the responsibility of *signing off for every body*; and several of the family of the late Mr. Kirk Boott, influenced by Mr. Lowell's views and representations, were actually *desirous* that the release should be given, and the account passed. What would have been said, then, if, after agreeing to a compromise for myself, I had, nevertheless, insisted, under such circumstances, on fighting out the battle for them,

against their will, and against the will of my co-trustee? And what, if I had thereby defeated the proposed family settlement, and prevented the restoration of the proffered peace? The dilemma was such, that I saw nothing left for me but to resign. I so notified to Mr. Lowell, at first verbally, and, again, in my letter of the seventeenth; and I should certainly have so resigned, but for his comforting assurance, that a release of *their* claims would "not be necessary." The reader may judge, then, whether I acted, in this matter, either as a wanton disturber of the family peace, or as a party unmindful of my duties as a trustee,—both of which violations of duty I am charged with by Mr. Lowell;—and he may also judge, for himself, what the motives were, upon which Mr. Lowell acted, throughout this business, and what his motive is in publishing a "Reply," of which but a small part of the falsehood has, as yet, been exposed.

CHAPTER L X I.

MR. LOWELL'S REPRESENTATIONS OF THE SETTLEMENT. FURTHER SUBTRACTION OF MRS. BOOTT'S INCOME.

The narrative, upon points connected with the accounts, and with the question of Mr. Boott's conduct as an executor, is now brought up to the time of the final settlement in the probate office, December 23, 1844. Thence to the time of the inquest, March 7, 1845, whatever occurred, worthy of narration, relates to the separate question of Mr. Boott's sanity, with the exception of certain matters entirely personal between me and Mr. Lowell. These I propose now to lay before the reader.

Very soon after the compromise arrangements had all been

carried into effect, a conversation occurred between us. We mutually expressed our gratification at what seemed to be a happy conclusion of a business, which, while it remained open, occasioned undue excitement in certain portions of the family. The change of trusteeship, it was thought, would remove all danger of collision, between Mr. Boott and any of his family, concerning pecuniary matters at least; and it seemed that the harmony, amongst the other members of the family, which had been disturbed, of late, by the question of Mr. Boott's removal from his trust, might now be restored, if its restoration were promoted by a course of careful conduct on the part of those, who were best informed respecting the business part of the transaction. We both agreed that the surest way, to effect this desirable object, was, for *us* to say *nothing* upon the recent subjects of *difference*, but simply to give out that we had agreed upon a trustee, to whom all the property had been transferred, and that all questions about property and accounts were amicably settled. Mr. Lowell was particularly emphatic on this point, and said, at parting, "Whatever you may hear about it hereafter, you may rest assured that it does not come from me."

Within three days, I heard, from what seemed to me good authority, that certain friends of the family were told by *Mr. Lowell*, just after our conversation, that "*Wright Boott had come out triumphantly; that the idea of any mismanagement, or loss of property, was completely abandoned by Brooks and William Boott; that his accounts were found to be entirely correct, and showed a large balance due to him, which was agreed to.*"

This breach of the spirit of our agreement was extremely vexatious; and the more so, because I could not bring it home to Mr. Lowell, without involving friends, who did not wish to be quoted. I told him, however, in general terms, what I had heard, without naming my authority. He did not deny the fact, but affected to consider that what he had said did not amount to a breach of our agreement, and assured me that he should be more cautious in future. I heard other

rumours, notwithstanding, at other times, to the like effect, as coming from Mr. Lowell; but never in a shape to be authentically traced to their source, and, after all he had said, I was not willing to believe that they *originated* with him; nor did I deem them of very serious importance, until they came to be connected with the question of the *cause* of Mr. Boott's death. Even then, I did not venture to attribute what I heard to Mr. Lowell, so positively as to call for explanation, until I learned, a year and a half after the coroner's inquest, what the information was, which he had given to the jurors; and then I thought it high time for me to move, as I did.

A few weeks after the settlement, an accidental conversation occurred between Mr. Lowell and Mr. William Boott, also, the substance of which Mr. William Boott mentioned to me. It led to a brief, but friendly correspondence, which I have before adverted to. [Ante, pp. 225, 487.] The correspondence speaks best for itself.

LETTER FROM E. BROOKS TO J. A. LOWELL.

January 31, 1845.

DEAR SIR,

I learn from Mr. William Boott that you have in your possession a letter from Mr. Kirk Boott, of Lowell, in which he says that, at a meeting between himself, myself, and one or more other persons, it was agreed, with my assent, that Mr. John W. Boott was justified in placing his mother's property in the Mill Dam Foundry. If Mr. Boott has understood you correctly, may I ask the favour of you to allow me to see that letter.

Yours very truly,

EDWARD BROOKS.

At Mr. Brooks's request, I state that the above information is correct, as far as I understood Mr. Lowell in conversation yesterday.

W. BOOTT.

LETTER FROM J. A. LOWELL TO E. BROOKS.

DEAR SIR:

My statement to Mr. William Boott, was, that I had *seen* a letter from Mr. Kirk Boott, of Lowell, in which he says, *in substance*, that at a meeting between himself and yourself and one or two other persons, *it was agreed, with your assent*, that Mr. J. W. Boott was justified in using *some portion of the funds, in his hands as executor, in business at the Mill Dam Foundry.*

That letter never was, except for a few hours, in my possession,

and I took no copy of it. I will try to procure a copy of it, or the original, for your inspection.

Yours very truly,

J. A. LOWELL.

JAN. 31, 1845.

LETTER FROM J. A. LOWELL TO E. BROOKS.

BOSTON, Jan. 31, 1845.

DEAR SIR:

The following is an extract from a letter from Kirk Boott, Esq. of Lowell.

"Sunday evening."

"MY DEAR WRIGHT:

"I intended to have had some conversation with you before my return home, but was too jaded, last evening, to attempt it.

"After leaving you, yesterday morning, I went to E. B.'s office, where Ralston, soon after, joined us.

"They both exonerate you from any *selfish* views in the management of the property, and, admitting your undeviating economy, consider you have sacrificed yourself to the desire of *helping others*.

"By the provisions of the will you were authorized to use the estate *in business*,—and, while there is not, on any side, a shadow of suspicion that you have *heedlessly squandered it*, there can be no imputation on your honor or integrity, *though it be in your hands greatly diminished*. But this will not apply to F.'s children. We are therefore of opinion that they must be paid in full, at all events, and effected as soon as possible."

This is all the letter contains on this subject. You will remember that, by a settlement afterwards made with Lyman and Ralston, Mr. Boott was *exonerated from all the debts of the Mill Dam Foundery*, and, *of course, the fund was not diminished*, as Mr. K. Boott seems to have feared it might be.

Mr. Robert Ralston, in a note on the same subject, says:—"I can most fully confirm the statement in Kirk's note. No one, at that time, or during the whole negotiation subsequent thereto, ever impeached your *honor* or *integrity*, or doubted that, by your father's will, you were at full liberty to employ the capital in your hands *in business*. I well remember that it was the *opinion of Mr. Brooks*, your brother Kirk and myself, that you had acted always in a most *disinterested manner, sacrificing yourself for others*."

I am yours, very truly,

J. A. LOWELL.

I do not mean to take up time with comments on this correspondence, (which is not noticed in the "Reply,") further than to point out the total failure of the authority, cited by Mr. Lowell, to support his position, that *I had ever agreed* that

Mr. Boott was *justified in placing his mother's property, or any property, held by him as executor, in the Mill Dam Foundry.* It was true, only, that the will allowed him, after forming the particular trust funds, to lend the *remaining shares of the minor children*, to be used in *one particular business, by one particular firm*, if it should be established; but not by *such a firm, or in such a business, as that of Messrs. Boott, Lyman & Ralston*, at the foundry. For further explanations on this point, I refer to my former remarks. [B. pp. 130 to 136.]

It was, I believe, about the time of this conversation, in January, 1845, that I learned from Mr. Lowell, incidentally, that a part of Mrs. Boott's income had been taken to make up the apparent sum in the hands of the new trustee. My former remarks on this subject are held out as quite ludicrous in the "Reply," and are there connected, by juxtaposition, with the very serious subject treated of in the last chapter. The shaft of wit, so shot for the reader's entertainment, and obviously to turn off his attention from graver matters, is hardly worth the picking up; but there are facts of some importance, connected with this part of the case, which the reader ought to know; and, for the purpose of stating them, I insert what Mr. Lowell says:—

"Another anachronism, precisely similar in its nature to the one just commented upon, occurs on page 123d of Mr. Brooks's pamphlet.

"I had understood the final agreement for the passage of Mr. Boott's accounts to be based upon a proposition previously made to me by Judge Warren, that so much of a dividend of the Merrimack Company, just declared, should be retained by the trustee as capital, as should be found necessary, upon appraisement of the stocks, to make good the original amount of the trust funds, namely, \$100,000. The sum of \$4500 45 was retained accordingly.

"It appears that Mr. Brooks and Mr. William Boott did not wish to insist on that condition, and addressed a joint note to Mr. Loring, requesting him to consider the whole of that dividend as income, and to pay it, as such, to Mrs. Boott. 'Whether this has been done or not,' says Mr. Brooks, 'we have not been informed; but I infer otherwise from the fact, that a new paper, designed apparently to ratify the actual settlement, seems to have been sent out to London, I presume by Mr. Lowell, immediately after the settlement was completed,

and to have been signed there, February 1, 1845, by Mrs. Boott, Dr. Francis Boott, and Mr. James Boott.'

"The joint note of Mr. Brooks and Mr. William Boott to Mr. Loring (App. p. 57) bears date February 3, 1845; so that, in plain English, it amounts to this, that Mr. Brooks considers a release executed in London on the 1st of February 1845, as warranting the inference that we were unwilling to comply with a request made in this country *two days afterwards!* I wonder that he did not characterize our reluctance as obstinate and protracted." [L. p. 193-5.]

The fact, which I stated, respecting Mr. Lowell's having obtained a *second* release from Mrs. Boott, *after* the settlement, and the *purpose*, for which I said it was obtained, it will be observed, are, here, tacitly admitted by the "Reply."

I have further to remark, that, if Judge Warren ever proposed that the capital of Mrs. Boott's trust fund should be made good, or apparently good, *out of her own income*, he did so without any authority from me; and, having no other evidence of it than this statement of the "Reply," unsupported by Judge Warren's own account of his proposal, I disbelieve the fact.

The accounts, however, were settled, in reality, though not in ostensible form, upon that false basis. That is to say, the account of November 18, even upon the incorrect valuation it assumes of the property on hand, exhibited only \$96,000 and a fraction, instead of \$100,000, for the investment of Mrs. Boott's trust fund. Between that time and the settlement of the final account of December 23, Mr. Boott received from the manufacturing stock \$7100 of income, which, after passing over the shares to his successor, was left in his hands, expressly, as "Income received *on account of Mrs. Boott*, and to be paid *to her or for her account*." [B. App. p. 53.] But, when the inventory of the new trustee came to be made up, it was thought desirable, by Mr. Lowell, to make, if possible, a show of \$146,000 of property in the hands of the new trustee, (that is, \$100,000 for the trust fund, and \$46,000 for the proceeds of the mansion-house,) notwithstanding that \$26,000 was taken out for the payment of his debt.

The high price of manufacturing stock, at that time, facilitated the execution of this idea. The seventy-one shares of Merrimack, which had cost Mr. Boott only par, and had sometimes been worth much less than par, were appraised at *twenty-eight per cent. advance.* But, notwithstanding this fortunate circumstance, the whole property, (exclusive of the mansion-house,) charged in the executor's accounts at \$121,500, could only be brought up, by the new appraisement, to \$120,655; against which stood the cash balance of \$25,215 45, claimed by the executor. This cash balance being taken out of the proceeds of the mansion-house, (\$46,000,) there was left, from this source, \$20,784 55, to be added to the appraised value of the stocks and the stable. But this would bring up the sum total of property, in the hands of the new trustee, even with the aid of this high appraisement, to no more than \$141,439 55. Of course, to make up an exhibit of \$146,000, and enable Mr. Lowell to represent to the family that Mrs. Boott's trust fund, and the proceeds of the mansion-house, were *all whole*, it was needful that a further sum of \$4560 45 should be paid to the new trustee. Such a sum is, accordingly, inventoried by the new trustee as "Cash received from John W. Boott." [B. App. p. 55.] But whence could it be taken? Not out of the executor's "cash balance," *for that was to go to Mr. Lowell.* But it might be taken, and was taken, out of the \$7100 of "Income received *on account of Mrs. Boott*, and to be paid *to her, or for her account!*"

This source of the payment is not stated on the face of the probate paper;—it appears, *there*, as if the \$4560 45 was a mere *gratuity* from Mr. Boott, who, *according to his accounts*, had already paid over *all that he owed*, except the \$7100, and *that* was retained, ostensibly, *for his mother*, being her admitted property. But Mr. Lowell, it will be perceived, in the extract above made from his pamphlet, admits, that this \$4560 45 was, in fact, taken out of that \$7100, and he charges the taking of it upon Judge Warren, as a thing *proposed by him.* No such fact is stated by Judge Warren, in his let-

ter of December 19, 1844, written when he erroneously supposed the whole settlement finished, and written for no other purpose than to inform me, fully, of the terms of the settlement. [Ante, p. 139.]

Thus, *Mrs. Boott's income* was made, without her consent or knowledge, to aid the high market prices of the day, in completing, nominally, *the capital of her own trust fund*, by a contribution of \$4560 45, to be added to the \$65,000, or thereabouts, which had been subtracted from her income in former years, for the payment of Mr. Boott's other debts. [Ante, Ch. 43.] This was done, also, without the consent or knowledge of Mr. William Boott, or of myself. We learned the fact, casually, from Mr. Lowell, about the time above mentioned. Such a mode of settlement was entirely contrary to our expectation, and entirely contrary to our views of propriety; since it was taking property from Mrs. Boott, *for the benefit of ourselves*, and the *other reversioners* of the trust fund. We understood, however, that Mr. Lowell spoke of the transaction as a thing done *by our desire*. Consequently, we addressed the following note to Mr. Loring :—

LETTER FROM E. BROOKS AND W. BOOTT TO C. G. LORING.

BOSTON, 3d February, 1845.

C. G. LORING, Esq., Trustee, &c.

DEAR SIR,—Having learned from Mr. Lowell that, owing to some misunderstanding as to the manner, in which we intended the trust fund, belonging to the estate of the late Mr. Kirk Boott, should be made good, the last dividend on the shares in the Merrimack Company has been added to the fund as principal, we request you to consider this dividend as *income*, and pay it, as such, to Mrs. Boott.

We are, Dear Sir,

Respectfully yours,
EDWARD BROOKS.
WILLIAM BOOTT.

We never received any answer to this request. But, at the time of writing my former pamphlet, I had discovered that, immediately after the settlement of the final account, a *new*

release of all claims on Mr. J. Wright Boott had been drawn up, here, for Mrs. Boott to execute, and had been executed by her at London, February 1, 1845, and that this executed release had been, afterwards, filed in the probate office here. It was obvious that this must have been done under the idea, that her *former* release, of May 29, 1844, already on file, could cover only misappropriations of her income *antecedent* to its date, and would not embrace the particular misappropriation made, by turning it into capital of the trust fund, in the settlement of December 23. The plain object of the *new* release was to cover *that*, and any other misappropriations of her property, that may have occurred *after* May 29. The discovery of so deliberate a plan for this purpose, carried out by the filing of the release, and coupled with the fact that no answer was given to our request by Mr. Loring, led me, when writing my former pamphlet, to infer that the release, of February 1, 1845, was considered to be a complete *subsequent ratification*, by Mrs. Boott, of the *actual settlement*; and that Mr. Loring's expectation of receiving that release, then on its way from London, was the cause of his omitting to answer our letter of February 3, 1845; since, if received, it would dispense with any call for action upon our request. The release must, of course, have been *filed*, in the probate office, some days, or weeks, *after* our letter had been received; and the act of filing it, indicated, of course, an intention to stand upon the legal effect of that paper, instead of refunding the money to Mrs. Boott. I accordingly stated, in the passage of my former pamphlet cited by Mr. Lowell, my further inference, drawn from these premises, that our request had not been complied with.

The fact, that the release was signed, in London, *two days before* our letter was written, in Boston, requesting Mr. Loring to pay that sum to Mrs. Boott, is the sole occasion of Mr. Lowell's sarcasm. He affects to consider my inference another instance of "attributing an antecedent event to a subsequent cause." [L. p. 12.] My inference may have been right or wrong; the premises may have been well or ill

stated ; but, in what the anachronism consists, or where the folly is,—except in the “ Reply,”—I think the reader will be at a loss to discover.

One thing, however, I think, he will easily discover :—That is, that the \$4560 45 was taken *from Mrs. Boott*, really, *to pay Mr. Lowell*. Mr. Boott could not consent to be discharged by the heirs without seeming to have accounted, in some way, for the *principal* of his mother’s trust fund, so that, with the aid of her release, he might stand right, to all appearance, on the probate record. This was equally important for Mr. Lowell ; since he had caused it to be understood, by most of the family, that Mrs. Boott’s trust fund was quite unimpaired, under Mr. Boott’s management. This I shall prove presently. But Mr. Lowell could not consent to forego *any part of his own debt* ; and it was not possible, for the want of means, to make up the nominal amount of the trust fund without leaving Mr. Lowell unpaid, to the extent of about \$4500, except by taking that sum from the \$7100, left in Mr. Boott’s hands for his mother’s account. That being the plain alternative, there seems to have been no hesitation how to choose. Indeed such appropriations of Mrs. Boott’s income had ceased to be a novelty.

The next occurrence, concerning Mr. Lowell’s conduct towards me, was a conversation immediately preceding the inquest. I gave a full account of it in my former pamphlet. He has now made his answer, and that I propose next to consider.

CHAPTER LXII.

MR. LOWELL'S CONDUCT IN RELATION TO THE INQUEST. TIME OF HIS RECEPTION OF MR. BOOTT'S LAST LETTER.

The question, which I have discussed, of Mr. Boott's conduct as an executor, and the question, still remaining, whether he was sane or not, are controversial matters, which, according to the "Reply," I love to dwell upon, for the sake of indulging a malignant and cowardly spite against the memory of an unhappy man, whom death has, long since, removed from this scene of contention. My present topics, on the other hand, relate, exclusively, to the conduct of Mr. Lowell. Here, at least, that gentleman can make no such mistake.

I narrated, formerly, an interview, at which Mr. Lowell made me acquainted with the fact of Mr. Boott's suicide, then just discovered. His concealment from me, at that interview, of the letter received from Mr. Boott, said to have enclosed his will, if he had in truth then received it, and, if not, his omission to inform me of its subsequent reception, before the inquest, connected with his conduct at the inquest, and afterwards, and with the impressions conveyed to the jury, in my absence, and without notice, were principal subjects of my former complaint.

To one question more importance seems to have been attached, by most readers, than by me; namely, the precise time of the probable reception of that letter. I stated the conversation at the interview above mentioned, and that it began some fifteen or twenty minutes before two o'clock, and ended at the door of the coroner's office, to which I had conducted Mr. Lowell, "about two o'clock, I think a little after." [B. p. 173.] Mr. Lowell himself says, "it was *past* two o'clock." [L. p. 16.] The conversation impresses every body as equivalent to an assertion, by Mr. Lowell, that he had, at that time, received no letter from the deceased. It

so impressed me ; and Mr. Lowell himself does not pretend to view its just effect otherwise. Indeed, he says, “ I [Mr. Lowell] *told* him that I had received no letter.” [L. p. 16.] Mr. Lowell did not tell me that, in direct terms ; but what he told me would naturally lead to the inference.

Now I do not pretend to disguise the fact, that, after all which had come to my knowledge at the time of the writing of my former pamphlet, I felt obliged to withdraw my confidence from any former indirect statement of Mr. Lowell, made, in any part of this case, while he had a point to carry, or when there was likely to be more in his mind than he wished to expose. Subsequent discoveries,—and especially the character of the “ Reply,”—have not increased my confidence in his assertions, however positive, under such circumstances, nor when necessary to maintain a position once taken, or useful to exculpate himself.

The several statements, concerning the moment of the reception of that letter, all coming directly or indirectly from Mr. Lowell, were so various and conflicting, and the surrounding circumstances of the inquest, and of Mr. Lowell’s conduct in relation to it, were so unusual and strange, that, upon the single question, whether he had the letter in his pocket, or not, at the time of the conversation with me, ending at the door of the coroner’s office, it was difficult to determine what the truth was. I was cautious, therefore, not to state any inference on that point,—although my suspicion may have been apparent enough,—but to state only the conflicting evidence, leaving every reader to draw his own inference, with all the information I had to give him, and leaving Mr. Lowell to explain the suspicious circumstances, if he could. I do not see, therefore, that I am culpably answerable for the inference, to which a fair statement of the evidence may have led any reader, even if it should happen that new evidence, then unknown to me, be found sufficient to satisfy him that his former inference was erroneous.

The several former statements, respecting the receipt of the letter, were as follows :—

The official account of the inquest reported Mr. Lowell as saying, that he received it "*about two o'clock, through the post-office.*" [B. App. p. 59.] According to two of the jurors, who were examined, he said, "he had received it *that morning,*" one of them adding "*through the post-office.*" [B. pp. 29, 30.] According to another, he said, he had received it "*that day.*" [B. p. 29.] He told me, himself, at an interview *after the inquest*, that the letter was "*brought to him, at his house, after he had parted from me.*" [B. p. 149.]

The coroner, on the other hand, stated to Mr. Dexter, that "*the letter was exhibited to him by Mr. Lowell, at the time Mr. Lowell had called upon him to procure an inquest.*" [B. p. 151.] The same witness stated to Mr. Loring, "*that Mr. Lowell opened the letter in his presence;*" [B. p. 152.] and Mr. Loring, writing in Mr. Lowell's behalf, admitted that the letter was produced to the coroner, *at the time when Mr. Lowell called on the coroner*, "*to procure an inquest to be holden.*" [B. p. 173.] That time appeared, as I stated it, to be at, or a little after, two o'clock, and Mr. Lowell admits that it was past two when I left him entering the coroner's office.

My summary of the evidence did not omit, however, to suggest the several contingencies, that might, possibly, reconcile the apparent conflict, consistently with Mr. Lowell's not having the letter when I so left him. I concluded it thus:—

"But whether he received it, between the time of my leaving him at the coroner's door and the time of his first seeing the coroner, or had received it previously, or found it at his own house afterwards, and then went again to seek the coroner, is not in my view very material. He had, at any rate, given me the impression that the letter was *not for him*, when he stated that it was not known to whom it was addressed, without suggesting any reason why his own letters, through the post-office, should have failed to reach him before that hour of the day. I ask, then, whether, if he did receive the letter immediately after we separated, and that letter was found to contain a *will*, affecting my rights of property, in common with those of others in the family, it was not his duty, as a friend and a gentleman, before taking any further steps towards an inquest, which *he* did not intend should result in a verdict of insanity, to have given me immediate notice of the fact of his reception of such a letter, and such a *will?* It may be very true that my own share of the pecuniary interest in-

volved was not so large as to have affected materially my course of action. But what right had Mr. Lowell to assume to *judge of that for me?*—or to prevent my interposing, as I might think proper, in behalf of *others*, whose interests were involved? What right had he to act upon a notice of my desire not to be present at the inquest, when a material alteration had occurred, to his knowledge, in the state of facts, upon which that desire was expressed, without first giving me *notice* of that change of circumstances, and of *his own intention* to do what he could towards establishing the sanity of the testator, so far as it was to be affected by the result of an inquest?" [B. pp. 173-4.]

The *point* of my complaint, it will be perceived, therefore, was wide of the question whether he had the letter, when I left him at the coroner's door, or not. Yet, to that question, the "Reply," chiefly, addresses itself, and states the fact to have been as follows:—

"Mr. Brooks and myself proceeded together in search of a coroner; but, as it was past two o'clock, and Mr. Brooks was naturally anxious to hasten home with the sad intelligence, he left me at the door of the building, in which the coroner's office is situated. I found that the coroner had gone to dinner; and, on returning to my own house, I received the letter produced by me at the inquest, inclosing Mr. Boott's will, and notifying to me his intended self-destruction." [L. p. 16.]

It is now proper that the reader should see the *last* statement on this subject from Mr. Lowell's witness, the coroner. It is contained in the following memorandum of a conversation, heard by Mr. J. C. Adams, under circumstances heretofore explained. [Ante, p. 88.]

MEMORANDUM OF A CONVERSATION,
Between Edward Brooks, Esq. and Sheriff Pratt, in Mr. B.'s office,*
this 13th day of April, 1848, 9 1-2 o'clock, A. M.

Mr. Pratt said,—“I have never had a copy of your book. Mr. Lowell sent me a copy of his, and called my attention to what you had said about me in your pamphlet—that you had been harsh and severe; but I did not pay much attention to it.”

Mr. B. said,—“I have said that,” &c. Mr. B. then got a copy and gave to Pratt, and opened it. “What I say is about that letter, and Mr. Lowell's showing it to you. You can see it,—I thought you had a copy.”

* Mr. Pratt is a deputy sheriff, as well as a coroner.

Mr. Pratt.—“I have heard there was a trouble about that. *I recollect that Mr. L. showed me the letter, when he came to my office about two o'clock,* on the morning of the inquest. It is my impression that he showed me the letter *the first time he saw me*,—for he *may* have been at my office twice,—though I think, he called only once. He mentioned his business, said that Mr. Wright Boott had committed suicide; and that he (Mr. L.) had a letter from him, appointing him executor. *He took out the letter and showed it to me.* I am not certain that he came to my office more than once,—*am certain that he did not come more than once.* *He said, I have just taken a letter from the Post-Office.* I did not tell Mr. Dexter, that he *read the letter to me*; but that he *took the letter in his hand and showed it to me.* This was hard on to two o'clock.”

Mr. Brooks said, that there was some contradiction about Mr. Lowell's conduct at the inquest.

Mr. Pratt said,—“I did not hear your name mentioned, or any thing said about your family matters. I did not know that you belonged to the family. *There was a general conversation after the inquest. Mr. Lowell talked with the jury. I did not hear him say any thing against you.* I said to the jury, that Mr. Lowell had a letter from the deceased; and asked if they would like to see it. I asked Mr. Lowell if the letter contained any thing in relation to the cause of Mr. Boott's death, or that he thought was material or proper to be shown. *He said it did not.* I did not call for the letter. I said I should want one good physician on the jury. *Mr. Lowell said Dr. Putnam is at the house, and will be a good man.* I knew Dr. P., and mentioned his name to the officer, who summoned the jury. This was before Dr. Palmer was summoned. I did not know any thing about the matter. I said to the jury, if you don't find that Mr. Boott was insane, don't find any thing about it,—*because if you find him insane, and he should be found sane, it would be bad.* Somebody, I don't know who, said there was no evidence of his insanity. Others said the contrary, and that no man would commit suicide who was not insane. Mrs. Lyman swore strongly, and so did the servants.”*

JOHN C. ADAMS.

Although we have no explanation, in the “Reply,” of the manner, in which the letter got to Mr. Lowell's house at that late hour of the day, the fact, that it was seen there, in his hands, at some short time after two o'clock, and that its seal was then, apparently, broken, in the presence of Dr. Jackson,

* These witnesses, according to the official report, [B. App. 58.] merely testified to the effect that they had not discovered any thing in his appearance indicating insanity,—Mrs. Lyman adding, that she had never seen her brother, during the year that she had lived in the house with him. This was erased from the report, at her request.

is vouched by a letter from that gentleman ; and it is needless to say, that, in *his* statement of matters, which he believes himself to have personally witnessed, I place as implicit confidence as I should in those of any gentleman of equally high character and known accuracy, who is writing nearly three years after an occurrence, described with so much particularity of minute detail, in circumstances, very insignificant at the time, but which the question at issue had made important, when he was called upon, by Mr. Lowell, to see what he could recollect, that might be of service. It is due to Mr. Lowell that the reader should see the whole of this letter, which I take from the "Reply." [L. p. 18.]

LETTER FROM DR. JACKSON.

DEAR SIR,

In reference to the letter, written to you by the late Mr. Wright Boott, on the evening before his death, I remember certain things very distinctly, which I will state.

I went with you to Mr. Boott's residence on the day after his death, between twelve and one o'clock, in consequence of a note to you from Mrs. Lyman, written, very obviously, under great agitation, asking you to go to Mr. Boott's, and to take me with you.

When arrived there, we found Mr. Boott dead, and obviously by his own hand. Mrs. Lyman related to us the circumstances, she knew, respecting her brother's movements the preceding evening. From these it seemed certain, that he had written one or more letters on that evening, and had gone out at a late hour, and after a short time had returned, and gone to his bed-chamber. The inference was, that he went abroad to deposit his letter, or letters, in the post-office. *It was at once suggested, that he would have written to you, under the circumstances in which he was, more probably than to any one else; but you said that you had not received any letter from him.* You and Mrs. Lyman then examined the drawers in the chamber, such as were not locked, to see if he had left any note, or letter, in them; but none was found.

When we left the house in Bowdoin-square, we walked together to Pemberton Hill; I turned up into the Square, and came home; you went down Court street, to take measures in reference to the sad event which had occurred. This was near two o'clock, as nearly as I can remember, but not two. I went home, and, as soon as I had attended to some affairs there, I went into your house, with a view to some arrangement for informing Mr. Wells's family of the melancholy occurrence. My brother Patrick went into your house either just before, or just after me. On my entrance, *you told me you had just*

got the letter, and you held in your hand a thick letter; you were crossing the room at the moment; you then sat down by the window, and broke the seal of the letter. After looking through the letter hastily, you read to us some parts of it, but not the whole, as I supposed and understood at the time.

At the same time you stated to me, that you had seen Mr. Edward Brooks, since you had parted with me, and that you had also taken some measures in relation to a coroner.

I am, dear sir,

Yours truly,

JAMES JACKSON.

Pemberton Square, December 3, 1847.

To JOHN A. LOWELL, Esq.

There is another letter from Dr. Jackson, dated January 26, 1848, printed in the "Reply," containing a few sentences, which have a remote bearing on questions appertaining to Mr. Lowell's interview with me, and which sentences I therefore extract in this connexion, as I shall have occasion to refer to them.

"On that day, about one o'clock, you came to my house, and showed me a note signed "Mary Lyman," or "M. Lyman," I forget which. The note was written without the usual formalities, and every thing about it showed that the writer was under great agitation. You expressed doubts as to the person who wrote it, but I felt persuaded that it was from the sister of Mr. Boott. The note begged you to go directly to her, and to take me with you. We went accordingly to Mr. Boott's residence in Bowdoin-square." [L. pp. 186-7.]

The letter then states what occurred at the house, and particularly what Mrs. Lyman's demeanour was, and proceeds thus:—

"After a time I suggested the propriety of having a coroner's inquest; at which she manifested some reluctance, and asked if such a measure was necessary. I said, that, if it were not taken, some question might afterwards be raised, whether Mr. B. died by his own hands, or those of another, a point which any jury could decide then by seeing what we saw.

"This conversation led to a question as to Mr. Boott's insanity. On this point Mrs. Lyman spoke with a great deal of vehemence, utterly denying that he had ever been insane." [L. pp. 187-8.]

Now I do not propose to make a point of that, which I did

not make a point of, formerly. But, on reading all the statements we now have, one cannot but be struck with the singularity of several facts, of which we are still left without any satisfactory explanation.

How did it happen, that Mrs. Lyman's messenger should have found Mr. Lowell *at his house*, so late in the day as Dr. Jackson puts it,—“between twelve and one o'clock,” according to one letter,—“about one o'clock,” according to the other?

How did it happen, that a letter, put into the post-office the night before, should not have reached Mr. Lowell till *after two o'clock*? It is said, indeed, that “every business man knows that such delays are of *constant occurrence* at our post-office; letters, so deposited, not being, *ordinarily*, attended to, till after the morning distribution of the mails.” [L. p. 17.] But I cannot find that such is the common experience of other business men; nor that the supposed custom of delay, in the delivery of city letters, is admitted by the postmaster.

How happened it that,—when it was suggested, as Dr. Jackson states, in the conversation with Mrs. Lyman, that the letter, written by Mr. Boott, was probably for Mr. Lowell, and when the drawers of the chamber were immediately searched, to see if it might not have been deposited in one of them, and when the conclusion was formed, from all the circumstances, that Mr. Boott must have gone to the post-office the night before,—how happened it, I say, that the inquiry was not pursued to other places, where Mr. Lowell's letters, at that time of day, were most likely to be? The most natural course, one would think, would have been for Mr. Lowell, on his way from Bowdoin-square, to have stopped at his own house, and, if the letter had not arrived during his absence, to have proceeded to his counting room, and to the post-office, before calling upon me or the coroner; or, if he chose to call on either of us by the way, still to have proceeded, thence, directly to those natural places of inquiry; since his belief, as expressed to me in our conversation, was,

"that the deceased had put a letter *into the post-office* for somebody, between ten and eleven o'clock, last night ;" [B. p. 145.] and it was immediately suggested by me, as it seems it had previously been suggested by Mrs. Lyman, or Dr. Jackson, that the letter was most likely to have been addressed to *him*. The statement of the "Reply," however, is, that Mr. Lowell went directly from the house in Bowdoin-square to my office ; thence, I know, he went straight to the coroner's ; and thence, it seems, he went back directly to his own house, whence he had lately come. "I found that the coroner had gone to dinner ; and *on returning* to my own house, I received the letter." [L. p. 16.]

And here, again, we are, naturally, led to ask, *from whom* did he receive it ? *Who brought it* to his house, at a little after two o'clock ? Why have we not the direct evidence of that person, that he *delivered* the letter there, at that time, instead of the evidence of another person, who only *saw it in Mr. Lowell's possession afterwards* ? It must have been a letter of remarkable size, if it contained all that it is said to have contained, including a will ; it was "a thick letter," according to Dr. Jackson, and therefore likely to be distinguished from the common run of post-office letters ; it was addressed in Mr. Boott's own hand, with which every clerk in Mr. Lowell's counting room must have been familiar ; and, in consequence of the general shock caused by this suicide, and the immediate connexion of the letter with that event, in the public mind, the fact that a last letter had been received by Mr. Lowell, made, within four and twenty hours of its reception, and for a long time after, such a sensation, among all persons connected either with Mr. Boott or with Mr. Lowell, that one would think the man, who had brought that letter to Mr. Lowell, could never have forgotten the circumstance. Yet his testimony is wanting. The coroner, it will be observed, by the way, in his last account, says, that Mr. Lowell told *him*, "I have just taken a letter *from the post-office*." In one of his former statements, the coroner said, that the letter was *opened* in his presence.

[Ante, p. 678.] And Dr. Jackson says, that, when he saw the letter in Mr. Lowell's hands, "you [Mr. Lowell] stated to me, that you had seen Mr. Edward Brooks, since you had parted with me, and that you had also *taken some measures in relation to a coroner.*" [Ante, p. 682.] Is Dr. Jackson, then, quite sure, that he actually saw the *breaking* of the seal?—for that is the only circumstance, in his whole statement, tending to fix the fact, independently of Mr. Lowell, that the letter was, at that moment, *just received*; and even that circumstance does not positively exclude the idea, that Mr. Lowell, might have *taken it* from the post-office,—as the coroner, says he had declared to him, five minutes before,—and, consequently, might have had it, though unread, in his possession, at the time of our interview. He may have had his reasons for not wishing the fact to be known, until he had found opportunity to examine the contents, and make up his mind whether he should disclose them or not.

The reader may think all this tending to superfluity of captiousness; but he must see abundant reason why *I* should have become extremely distrustful of Mr. Lowell, throughout this whole business. There was something peculiar, too, in his *manner* of speaking about the letter, during our conversation, which I cannot convey to the reader. Suspecting nothing at the time, I did not, then, attempt to account for it to my own mind. But when I recall it now, as I do, distinctly, I confess that the circumstance has its effect upon my judgement. However, all I have further to say on the subject is, that, if Mr. Lowell is satisfied with the position, in which he has left this part of his case, I am also. Indeed, I never considered the mere point of his having received the letter *before* he called at my office, a very material point *for me*; nor do I consider that drop in the bucket to be, any longer, *very* material for Mr. Lowell.

That which I did, and do, consider material, namely, the admitted fact that the letter was in Mr. Lowell's possession long before the inquest,—his proceeding in the inquest, not-

withstanding, after what had passed between us, without notice to me of the reception and contents of the letter,—his conducting the inquest to a result, which excluded insanity, in the existing posture of our family affairs,—his doing this in the absence of both Mr. William Boott and myself, without caution given to either of us of his intention, or desire, in that respect,—his omission to notify to Mr. William Boott the sad event of the day, and the inquest proposed, contrary to his express engagement,—his declaration to the jurors of circumstances tending to account for the death on the theory of maltreatment by relatives, and, especially, his suggestion that the deceased had been untruly charged with mismanagement of his father's estate,—the use made by him, in that connexion, of the account drawn up by himself, and of the allowance by the judge of probate of the balance it claimed, without stating the manner, in which it came to be allowed,—the suppression, by suggestions of expediency, of all these matters in the official report, coupled with total omission to communicate them to me in any other form,—his subsequent conduct in relation to the letter of the deceased, allowing its contents to become known, sufficiently to connect themselves with common rumours respecting the cause of the suicide, and yet refusing to me a sight of the letter, and any fair opportunity to examine and meet the charges, which he said it contained,—his assurance, contrary to the fact, that he had not shown or read the letter to any one,—all this,—my whole original complaint,—stands, after a “Reply,” substantially, just as it did, or, at least, no better than it did for Mr. Lowell. His explanations on these points must be briefly disposed of.

CHAPTER LXIII.

MR. LOWELL'S CONDUCT IN RELATION TO THE INQUEST. ~ HIS
INTEREST IN ITS RESULT.

The "Reply" makes a great show of excellent motives and kind intentions, on the part of Mr. Lowell. I, formerly, said nothing about motives or intentions. Mr. Lowell chooses to bring them into the case ; and, it is my business, now, to examine what he says of them.

The reader, however, should first be reminded of the following conversation between me and Mr. Lowell. :—

"Mr. Lowell was the first person, who informed me of the event. The course of our interview was nearly as follows. He came into my office at about fifteen or twenty minutes before two o'clock, and told me, in general terms, that Mr. Wright Boott had destroyed himself. I was much shocked, and expressed my surprise, remarking, that 'I thought he had been very tranquil since the settlement of the accounts.' Mr. Lowell said, 'he has been quite tranquil *until about ten days ago*, when he got an idea that his brother William had *stolen a letter of his*, and sent for me in consequence. He said it was a letter from his mother, which ought to have come by the last steamer, and insisted that *his brother must have taken it from the post-office and kept it*. *I found it impossible to reason him out of this idea*. He insisted upon my going with him to the post-office for the purpose of investigating the subject, and getting his box changed.' Mr. Lowell then narrated the particulars of the suicide, so far as they were known or conjectured, and, among other things, mentioned, that the deceased had put a letter into the post-office, for somebody, between ten and eleven o'clock last night. I made no remark on that at the time,—but he, soon after, going on with his narrative, repeated, with some emphasis, 'he put a letter into the post-office last night, and I can't find that any body has got it.' I then asked, 'how do you know that?' He said, 'the servants saw him writing till about half past ten, and then saw him put a letter into the breast of his coat and go out with it. He was absent just about long enough to have gone to the post-office ; but nothing has been heard of the letter, and nobody knows to whom it was directed.' I said, 'You would have been the most likely person for him to have addressed a letter to.' He replied, 'Perhaps so—but it may have been sent to Mrs. Ralston, or to Mr. Wells.' I said, 'Yes, or it may have been directed to England.'

He assented to this as not unlikely. I then remarked, ‘All that you have now told me serves to confirm the idea that I have long entertained, as you know, that Wright was insane.’ He said, ‘I don’t know about that. Do you think there ought to be an inquest?’ I replied, ‘By all means.’ He then asked, ‘Where is the coroner to be found? I don’t know where to find one.’ I answered, ‘Neither do I; but I presume somewhere among the constables’ offices in Court-square.’ It was, by this time, about two o’clock, and I proposed to go with him into Court-square and see if we could find the coroner. We went out together with that view. On the way I remarked, that, ‘in the present state of affairs in the family I should rather prefer not to be present at the inquest, unless it is necessary.’ He said, ‘It is not at all so—I can do every thing.’ I reminded him that Mr. William Boott was at Lowell, and would not be back till six o’clock. He said, ‘Give yourself no trouble about that. I will be at the cars myself, or have some one there, to notify him the moment he arrives, and will make all previous arrangements.’

On arrival in Court-square, I soon found the sign of Jabez Pratt, coroner, which I pointed out, saying, ‘here is the man you want;’ and as I was anxious to go home and break the news to my wife, I inquired, ‘Do you want any thing more of me?’ He said ‘No,—I will take care to notify William Boott;’ and I left him at the door of Mr. Pratt’s office, just after two o’clock, and went home, in perfect confidence that he would not only do all that he had undertaken, but would do it precisely as it ought to be done.” [B. pp. 145–6.]

Not one word of this narrative is contradicted, or materially qualified, in the “Reply.”

Now my complaint was of unfriendly treatment, to say the least,—considering the relations, in which we stood,—in proceeding with the inquest, and allowing it to terminate as it did, after the receipt of the letter, precisely as if there had been no change of the circumstances, under which I had expressed my desire not to be present, and to leave the conduct of the business to Mr. Lowell.

The “Reply” makes no direct answer to this; but it presents a number of excuses. The nearest approach to an answer lies in the following disclaimer of any conceivable interested motive to act adversely to me, and in the suggestion of the insignificance of a coroner’s verdict, in questions of property :—

“I had no interest whatever in the settlement of Mr. Boott’s accounts, or in the verdict of the jury of inquest.” “I knew that a verdict

of suicide, by a coroner's jury, involves, in this country, no consequences ; that it does not necessarily express any opinion on the question of insanity ; and that, when it does, it can not be introduced, even as *prima facie* evidence, in a trial on the probate of the will." [L. p. 20.]

How Mr. Lowell came to know, before he had a moment's time to consult counsel, so much of the *law* on this subject, he does not inform us ; but, if he knew all this, he also knew how *usual* it is for the verdict of a jury of inquest to establish the fact of insanity, as a means of accounting for, and excusing, the suicide, whenever there is the slightest other evidence to show a disordered mind. He knew, besides, how vastly important it was, irrespective of any mere *legal* consequences, that such a verdict should be found in this particular case, if the facts would warrant it. Especially he knew, that such a verdict could not but be greatly desired, and reasonably expected, both by Mr. William Boott and myself, considering certain facts, which were beyond dispute, and our long settled opinions, and the dissension, that had existed in the family on this very point,—all perfectly well known to Mr. Lowell.

It is said, in further excuse, that "six out of the eight surviving members of Mr. Boott's family, did not believe in his insanity, and desired no verdict contrary to the truth." [L. p. 21.]

Of course, *no one* of the family desired a verdict *contrary to the truth* ; but the very question among them had been,—What is the truth ? An impartial jury, weighing the evidence without feeling or prepossession, could judge better than they. No one of the six brothers and sisters referred to, except Mrs. Lyman, was, at that time, acquainted with the fact of the suicide. What their opinions might be, after such a startling event, was quite unknown to Mr. Lowell, except in the case of Mrs. Lyman. She had never been accustomed to think her brother insane ; but, it is very evident, from the account of her state of feeling at the moment, given by Dr. Jackson and Mr. Lowell, [L. pp. 186–188.] that her *desire* would have been for *that result*, which she might have been led to

think *most favourable* to her brother's memory. What others of the family might desire, in this new posture of the case, Mr. Lowell could not possibly judge of. The most of them, probably all except myself, were utterly ignorant of particulars of recent occurrence touching the state of Mr. Boott's mind,—the scene, for example, at the post-office, alluded to above, no less than the suicide. The postmaster testified to that scene, afterwards, in the probate court, as satisfying several persons present that Mr. Boott was insane ; and there was other conduct of the deceased, about that time, which had impressed *other strangers* with the like belief, as I shall have occasion to show. Mr. Lowell acted, therefore, with extraordinary presumption and precipitancy, if he really assumed, as his motive of action, that all the near relatives, except Mrs. Brooks and myself and Mr. William Boott,—could their sentiments have been collected over the dead body, with full knowledge of all the facts known to him,—would not have felt the desire, which relations ordinarily feel, that a jury should be satisfied that the last fatal act was fairly attributable to an irresponsible state of mind.

Does Mr. Lowell mean to have it supposed that they would have *preferred*, at that solemn moment, to have it believed,—as he has since endeavoured to cause them and others to believe,—that Mr. Boott “with great calmness, as befitted the occasion,” deliberately adopted suicide, in consequence of the cruelty and malice of some of his and their own brothers and sisters, rather than to have it believed that his strange conduct, which I shall prove, during a portion of his life, and in the destruction of his life, should be accounted for by insanity ? I shall not credit this of any one of them. And as to their present belief,—after a verdict, which did not find that excuse, and after the representations, which have been made to them by Mr. Lowell,—as I shall prove,—if that belief now is what Mr. Lowell asserts, it will be made perfectly obvious to every reader, that it is founded, essentially, on their unbounded and much abused confidence in Mr. Lowell.

But, when we are told that he had *no interest* in the matter, and did nothing to *influence the verdict*, I beg to ask, How came one of the jurors to be impressed with the belief, from all he heard and saw, "that Mr. Lowell was *extremely anxious* to have Mr. Boott made out a *sane man?*" I ask further, had he not strong motives to desire that Mr. Boott should not be made out an *insane man?*

Look at the magnitude and extent of his pecuniary dealings with Mr. Boott. See how the property of the estate had been mingled,—to what extent, or in what manner, precisely, we know not, but to a great extent, we do know,—with the affairs of the old firm of Boott & Lowell ;—not only the unliquidated interest of the estate in outstanding mercantile business, if any there was lawfully outstanding, but even the specific funds, which had once been set apart, and specifically invested, for the special trusts of the will. Of those identical funds, so invested, a sum of \$52,000, at least, in stocks, is traced directly from the executor into the hands of Boott & Lowell. [Ante, p. 527.] The stocks were sold by them ; and, as yet, the proceeds are not traced out of their hands, *back to the estate*. I do not mean to suggest even a probability that any part of them, beyond commissions and usual mercantile charges, still rests in Mr. Lowell's pocket. That, of course, I *know* nothing about. But it is not the idea, which I mean to present. It is far from covering the whole question of direct pecuniary interest. The firm, as a firm, it is clear, was, at one time, largely indebted to the estate for these stocks, or their price, or their proceeds, and for other funds of the estate in their hands. One of the partners was himself the executor. The other partner, so far as we can see, takes and uses, jointly with the executor, trust property, which he must have known that the executor had no right, or authority, so to deal with. There may have been, and I believe that there was, more or less of loss upon the operations of the house of Boott & Lowell. Mr. Lowell no where hints the contrary, though his argument requires it. Perhaps, it may not have been of great amount ; yet, as Mr. Boott was situated, it

was of real importance to him. There may have been, and there probably was, (Mr. Lowell can tell us, and nobody else can,) afterwards, and many years ago, some settlement of all the partnership accounts of Boott & Lowell, between the partners. In that case, it must have been understood, of course, that Mr. Boott was to take upon himself the burden of duly accounting, in behalf of the firm, for all that belonged to his trusts, and that he would hold his partner harmless on that score. But, as it turned out, *before any such accounting took place*, he was found to have lost what little property there may have been of his own ; and a large part of the property of the estate was, also, irretrievably lost in his hands, *and he became utterly unable to account for it.* Did all the funds of the estate, for which Boott & Lowell had made themselves chargeable, ever reach their true owners ? Is Mr. Lowell, or is he not, yet liable, as surviving partner, to account in equity for any balance ? Were the circumstances such, that the private settlement between the partners, presuming that there was one, left no responsibility upon Mr. Lowell to see to the due application of these trust moneys ?

I put these matters interrogatively, because all the circumstances are not yet disclosed, nor, perhaps, enough of them to warrant a distinct and positive opinion. All we positively know is, that funds, which stood in the name of "John W. Boott, *executor*," went to Boott & Lowell ; and that, whatever may have been restored by Boott & Lowell to J. Wright Boott, *personally*, nothing went back from them, ostensibly, to "John W. Boott, *executor*." Whatever he held, after the dissolution of that firm, he held, apparently, in his own name and right, until the year 1831 ; and when, in that year, he undertook to reconstruct his trust funds, the property was so embarrassed, by his private pledges and engagements, that he was quite unable to clear it. It never has been cleared, to this day, except by appropriating to the payment of his private debts, large portions of the income of the trust property itself, and a large part of the proceeds of the sale of the mansion-house. Who is to answer for the loss ?

However that may be, there has been, on Mr. Lowell's part, such a want of frankness and readiness of disclosure, concerning the connexion of Boott and Lowell with the executor's stock dealings, and concerning other transactions of that period, in which he participated more or less, that, until the mystery of his silence, and the true nature of the transactions, shall have been satisfactorily explained, he cannot reasonably complain of conjectures to his disadvantage. Without imagining, therefore, any thing more essentially wrong than an improper use of these trust funds, by permission of the executor, at a time when Mr. Lowell was a very young man, connected in business with an older one, whom he may have supposed richer in his own right than he was, I am obliged to infer, from his marked reserve, the existence of some reason, which made it undesirable to Mr. Lowell, when an executor's account was to be settled, that these old transactions should be minutely inquired into ; and especially undesirable, afterwards, that the suggestion of any kind or degree of insanity, on the part of Mr. Boott, should be mixed with them, or with the settlement of December, 1844. Is a mere general disclaimer of personal interest satisfactory, under such circumstances ? It is all we have from Mr. Lowell.

The next fact we find, bearing on this point, is a large loan,—no less than \$30,000,—made by Mr. Lowell, from trust funds in his hands, to Mr. Boott, and made upon the security of stocks, which, though standing in Mr. Boott's name, it now appears, did not in equity belong to Mr. Boott, but to the trusts of his father's estate ; and it seems that Mr. Lowell had means of knowing their true ownership, or at least knew enough to put him on inquiry. [Ante, Ch. 39.] How came Mr. Lowell to make such a loan ? How came he to take such security ? Was it all out of disinterested regard for Mr. J. Wright Boott ? The loan is, afterwards, increased, by an advance of \$21,000 more on Mr. Boott's account, and additional stocks of the estate pass into Mr. Lowell's hands, he knowing, at that time, certainly, that Mr. Boott was not worth one dollar of his own, and that these

stocks had been specifically marked as the estate's property. [Ante, Ch. 36.] Other subsequent advances are at least probable ; and thirteen years elapse, during which there seem to have been continued pecuniary dealings with Mr. Boott, founded always, apparently, on the security of these stocks. And, during all this period, the income of the trust funds is constantly applied, without the knowledge of the party entitled to it, to the reduction of the principal, and the payment of the interest, of the debt due to Mr. Lowell. Mr. Boott is then called upon to settle an account. Mr. Lowell prepares one for him, showing nothing of the transfer of the trust funds to Boott & Lowell, nor of the subsequent pledge to himself of the stocks, which really represented more or less of those funds, but exhibiting a balance, as due from the estate to Mr. Boott, just sufficient to cover his private debt to Mr. Lowell. Mr. Boott positively refuses to sign this account. He declares that he will never sign any account, which represents him as an apparent creditor of his brothers and sisters. He finally yields, and does sign and present the account, and the heirs, knowing nothing of these facts, agree to allow it, if he will resign his trust. In the mean time, he had made a will, under very singular circumstances, bequeathing to Mr. Lowell reversionary property enough to cover this same debt, which was afterwards paid by the settlement of accounts, and bequeathing to him, besides, his very valuable collection of "plants, and gardening apparatus, and botanical books." [B. App. p. 41.] Now, if Mr. Boott was an insane man all this time,—I leave the reader to his own conclusions. I only ask, whether it did not behove Mr. Lowell to make him out sane, if he could ?

How is it possible, upon the ordinary principles of human nature, that Mr. Lowell should have been desirous, or willing, that Mr. Boott should be thought by any body to have been an insane man, if he could see any other probable way of accounting for the facts, and, especially, if he himself believed, as he says he did,—and he certainly so testified,—that he had never seen any indications of insanity ? Having taken a decided stand on that point in Mr. Boott's life time, by repre-

sentations to some of the heirs,—though not to me,—while a settlement of accounts was to be made for Mr. Boott, in a form to prevent inquiry and cover his own claim, how could he, afterwards, recede from the ground he had taken, when a settlement had been actually made on that basis? A finding of insanity, at the death, would, assuredly, have run back, in the mind of every man, to the first moment when it had become a subject of discussion, or suspicion; and who could say where such an inquiry would stop, or to what it might lead, in connexion with such an account of the whole executorship as had been, so recently, settled with the heirs, upon a compromise, made in ignorance of material facts? It was difficult,—is it not always difficult?—for Mr. Lowell to take a retrograde course.

I do not mean to suggest, that he may not have fully persuaded himself of that, which it was most for his interest to believe. I shall have occasion, indeed, to prove a very sudden change of opinion, respecting Mr. Boott's sanity and the causes of trouble in the family; and that this change of opinion was precisely coincident with his knowledge of the fact, that there must be a resignation of the trusteeship, and a settlement of the executor's accounts. I do not say that the change was not a real one. All I mean to say is, that, having expressed an opinion of Mr. Boott's sanity, long before his death, having acted upon it, and having caused others to act upon it, and having, thereby, secured a settlement of the accounts in his own way, that opinion may well have become fixed and immovable, and was, also, as it happens, the opinion, which his interests required him to maintain. He was no longer open to conviction by any new fact. There was nothing for him to do, but, either to back out entirely, admitting that he had been all in the wrong himself, and that he had misled others, or to maintain, in spite of suicide, and of whatsoever else might happen, the positions, to which he had formerly pledged himself;—namely, that Mr. Boott was perfectly sane,—that the notions of any mismanagement, unless in mere matters of form, were totally unfounded,—and that the account, he had prepared for him, was a

complete and unimpeachable account. To back out! What was it but to endanger the settlement, and the reopening of accounts? And, apart from all considerations about Boott & Lowell, how can he have the face to say, that he had *no interest in the settlement of an account*, which paid to him a long standing debt of \$25,000, resting upon a security, concerning which nice inquiries were at least disagreeable? What odds does it make, that the moneys, lent, were from *trust funds* in his hands, for which he may have been accountable to his trust, and not his own private moneys? And how can he venture to declare, thus publicly, that he had *no interest in the verdict of the jury*, if that verdict was to involve, in any form, or for any purpose, the question of Mr. Boott's sanity or insanity? What difference would it make to him, that the verdict would not be *legal evidence* to affect the probate of Mr. Boott's will, or have any other *legal effect*, if it was to have an effect in popular estimation, or in the estimation of the Boott family, upon matters, in which he had so deeply committed himself?

When a portion of the family had been, all along, maintaining that Mr. Boott was insane, and another portion had been insisting that he was not, what would have been the effect of the opinion of six impartial men, trying the question judicially, and publicly declaring that the suicide was a consequence of insanity? Was it not motive enough, then, for a desire to prevent so striking a confirmation of the disputed opinions of Mr. William Boott and Mr. Edward Brooks, that Mr. Lowell had, himself, so recently, made up, and induced Mr. J. Wright Boott to adopt, an account exhibiting a balance in his own favour,—that he had procured that account to be allowed in the manner, which has been shown,—that he had himself a personal interest in its allowance,—and that several members of the family had relied, in that settlement, upon Mr. Lowell's representations that there had been no substantial mismanagement, or loss, and that Mr. Boott was not labouring under any mental infirmity? These representations I shall clearly prove; and the other facts, I think I have proved.

CHAPTER LXIV.

MR. LOWELL'S CONDUCT IN RELATION TO THE INQUEST. HOW I
WAS MISLED.

Mr. Lowell left me with the assurance, as he admits, that he had received no letter from Mr. Boott; and, under that assurance, he agreed, at my request, to discharge me from the disagreeable necessity of personal attendance at the inquest, by voluntarily engaging to do every thing himself.

Now, I ask, did he not, thereby, put himself in my place? Was he not bound, by every obligation of honour, to have the business conducted as he knew I should wish to have it conducted, and in no manner to prejudice me, unless he gave me notice to the contrary? Yet, within five or ten minutes from our parting, according to his present showing, he receives a letter; he finds a will in it, cutting off most of the heirs, myself included, from any portion of the inheritance; he finds himself named as the executor; and he finds that I am charged, in the letter, by Mr. Boott, at the last moment of his life, with conduct, so disgraceful, that, unless the charges were admitted to be the offspring of some insane delusion, it at least deeply concerned me to know them, were it only for purposes of explanation to Mrs. Boott and her family; and, as the best explanation of them, it deeply concerned me that the fact of their author's insanity should be established by the inquest. Yet, representing *me*, as he did for the purposes of the inquest, and under the assurance, he had given me, that he had no letter from Mr. Boott, and knowing, as he did, my long settled opinion of Mr. Boott's insanity, he gives me no notice of the reception of this letter, or of this will, but proceeds with the inquest, as if nothing new had happened; and, without introducing a particle of the evidence, known to him, which would tend to prove the insanity of Mr. Boott, or even suggesting that any person entertained such an opinion, he permits, and in effect causes, a verdict to be found,

which, under the circumstances stated, or suggested, by him to the jury, is all but an express finding of sanity, in an act of suicide caused by my cruel and oppressive treatment of the deceased !

Now, I ask, whether any fair-minded man, having an interest of his own, adverse to that of a friend, for whom he was acting in so delicate a business, would have done or permitted this, without giving his friend very distinct notice of his own opinions, and of his adverse interest, and of his own intentions, and of the unexpected reception of such a letter, and will, so materially altering my position in the case ? Yet Mr. Lowell has the coolness to say :—

“ My receiving the letter afterwards could make *no difference* in the course which it was *my duty* to pursue, *except* that it made it *imperative* upon me, *as the representative of Mr. Boott*, to take upon myself, (*what kindness to the parties, and a desire to spare their feelings*, had already induced me to assume) the labor and responsibility of the inquest and the funeral.” [L. p. 185.]

Why did he not give me notice, then, that he was about to act in this *new capacity*, and *not* as the representative of myself, and, *through me*, of the other survivors in the family ? For, it will be remembered, that *I was the only male member of the family, whom he had consulted on the subject of an inquest.* He derived no authority to act in that business, at all, except from me, until the receipt of the letter. He left me, having undertaken to act as *my* representative ;—he now says that he found himself, almost instantly afterwards, called upon to act “ as the representative of Mr. Boott ;”—yet he gave me no notice of the change, and he thought it his “duty,” in representing the dead, to *misrepresent the living*, for whom he had undertaken to act.

Mr. Lowell has the assurance to say further :—

“ Mr. Brooks was *fully advised of my opinions* on the subject of Mr. Boott’s insanity both by my *letters* to Dr. Boott above cited, *which I had read to Mr. William Boott*, and by my conversation with himself that morning, in which I refused to assent to his inference on that point *from the suicide.*” [L. pp. 184–5.]

Let us see if this be so. Mr. Lowell does not pretend that I was advised of his opinions, as now professed, except upon the occasions, and by the particular means, he mentions. My former statement was express, as follows:—

"As to Mr. Lowell's state of mind upon the subject, [of Mr. Boott's insanity] I never had any clear evidence what it was, until I was made acquainted with his testimony before the jury. He never *directly admitted* to me, nor do I *know* that he did to others, *a belief* that Mr. Wright Boott was *not sane*. Indeed he could not well do that, while he was acting as *his agent*. But my *inferences from his remarks were, that he entertained at least a strong suspicion, and indeed I thought a secret belief, of it.*" [B. p. 91.]

These were my inferences from his remarks, *before* the conversation immediately preceding the inquest.

Mr. Lowell now admits that he did entertain that belief, or "serious doubts," at least, [L. p. 162.] *until* he altered his mind, about the time of an interview with Dr. Jackson, under circumstances, which I shall explain. It appears, then, by Mr. Lowell's admission, that my inferences, from all that had passed between us, were well warranted, unless they should have been qualified by the particular facts, he now mentions; which are two: 1. Certain letters from himself to a third person: 2. The conversation with me on the day of the inquest.

First, as to his letters. He does not pretend that they were ever shown, or read, to *me*. But, he says, he read them to Mr. William Boott; and this, upon the theory of a *conspiracy*, he wishes the reader to consider the same thing as having read them to me.

These letters, which are printed in the "Reply," [L. pp. 164-5.] the reader should now see, attending to certain parts, which I shall mark by difference of type.

LETTER FROM J. A. LOWELL TO DR. FRANCIS BOOTT.

"BOSTON, APRIL 10, 1844.

"FRANCIS BOOTT, Esq., London.

"MY DEAR FRIEND,—As I have been told, that my opinion has been quoted to you on the subject of the state of your brother Wright's mind, I think that it would be unfair, both to him and to you, if I allowed such a statement to be made without the proper qualification.

"I have never seen any thing, in my intercourse with him, that would have induced such a suspicion.

"It is true that, upon an *ex parte* statement from others, that he had taken great offence, without any provocation, against members of his own family,—and had proceeded to personal violence against one of them,—*I became apprehensive that constant seclusion was producing unhappy effects upon his mind*; and I did confidentially consult Dr. Jackson, whether it might not be well to induce him, by a change of scene, to dispel any ideas that might be taking too strong possession of his imagination.

"Since that time, I have found, in my intercourse with other parties, a degree of exasperation against him, that gives to the whole matter, much more than I had supposed, the aspect of an ordinary quarrel, in which both sides may have given and endured provocation without impeachment of the moral or physical sanity of either, and I must say, that this exasperation is quite inconsistent with a conscientious belief, however they may persuade themselves, that so near a relative has been afflicted with this greatest of human misfortunes.

"You will not understand me, my dear friend, as taking any part, or expressing any opinion, on the original matters in dispute. *I have carefully avoided hearing any statements from either side.* I have said to both of them, that there was no sacrifice, of time or feeling, that I would not make to bring about a reconciliation; but that, if there was no hope of success as a peace-maker, I was determined not to become involved in the matter.

"My only object now is to prevent improper inferences being made from a supposed expression of opinion on my part,—*an opinion originally founded on hypothetical statements, and which I now see what I think good reason to withdraw.*

"I inclose a letter from Dr. Jackson on the same subject.

"I remain yours very truly,

J. A. LOWELL."

LETTER FROM SAME TO SAME.

BOSTON, APRIL 19, 1844.

FRANCIS BOOTT, Esq., London.

MY DEAR FRIEND,—I wrote to you a few days since, inclosing a letter from Dr. Jackson, intended to remove any unfair impression that might have arisen in your mind from the opinion attributed to him, as to the state of your brother's mind. *I have since seen Wright on business connected with these unhappy differences, and am fully persuaded that HE IS AS SELF-POSSESSED AND RATIONAL AS YOU OR I ARE.*

As I have said to you before, I have no knowledge, nor do I wish to have, of the causes of these dissensions, nor do I blame any one. Misunderstandings will arise among the most honorable and high-minded men, and the interference of friends frequently proves unavailing.

But I do know much—MORE, PERHAPS, THAN ANY OTHER PER-

SON,—of the HISTORY OF THIS PROPERTY AND ITS MANAGEMENT ; and I am VERY SURE, that, with many and very grave errors of form, SUBSTANTIALLY THE WHOLE MATTER STANDS RIGHT ; and I do earnestly desire, that a pure, generous, and high-minded man, whom I have known as such for nearly thirty years, should be SHIELDED FROM THE CONSEQUENCES OF MERELY TECHNICAL OMISSIONS.

I am, dear sir, very truly yours,

J. A. LOWELL.

These are the two letters, which, Mr. Lowell says, he read to Mr. William Boott. Now I never understood, from Mr. William Boott, that he had heard Mr. Lowell read more than one letter, addressed by him to Dr. Boott ; though the "Reply" says that he had read the "letters to Dr. Francis Boott, above transcribed." [L. p. 176.] I am confirmed in my belief, that the "Reply" errs in that assertion, by the conclusion of Mr. Lowell's own letter to Mr. William Boott, dated June 24th, 1844, as will appear by the following correspondence :— [L. p. 175.]

LETTER FROM W. BOOTT TO J. A. LOWELL.

BOSTON, JUNE 22, 1844.

DEAR SIR :

I have, with great surprise, *lately learned from England*, that you have been *writing to my mother* about the difficulties existing in her family, and that *your opinion, or advice, has had an influence in determining her conduct towards some of her children*.

Will you have the kindness to send me a copy of what you have written to her, and to give me the reason for your interference?

I have also learned, at second hand, *from Dr. Jackson*, that you made a statement to him last year, upon which he gave an opinion that my brother Wright was of unsound mind ; that you afterwards made a second statement to him, which led him to reverse his opinion ; and that he, at your request, gave you this second opinion in writing.

If these things so happened, will you oblige me by informing me when your second statement was made,—what it was,—why the precaution was taken of getting Dr. Jackson to write his opinion,—and whether, at the time of making your second statement, you had inquired for, and were possessed of, the facts necessary for forming a correct judgment upon the point in question.

With many apologies for this trouble,

I am, Dear Sir,

Yours very truly,

Wm. Boott.

J. A. LOWELL, Esq., Boston.

LETTER FROM J. A. LOWELL TO W. BOOTT.

BOSTON, JUNE 24TH, 1844.

WILLIAM BOOTT, Esq.

MY DEAR SIR,—I am willing to believe that your note of Saturday, though somewhat peremptory in form, was not intended to be disrespectful or unfriendly. On that belief I will answer it.

I never wrote to your mother in my life. *I never gave, directly or indirectly, any opinion or advice that could influence her conduct towards her children.*

I never made any statement of facts to Dr. Jackson, except such as referred to the state of feeling between the parties—facts sufficiently notorious.

I did not request of him to reduce his opinion to writing.

I will only add, that many dissensions and family quarrels, especially with persons of a naturally reserved temperament, have their origin in the hasty adoption of second-hand rumors.

I did write to Frank [Dr. Francis Boott] on the subject of the state of his brother's mind. If you are disposed to call at my office in a spirit of friendliness, I will read you that letter with pleasure.

I am, dear Sir, yours very truly,

J. A. LOWELL.

The offer, therefore, was confined to the reading of a *single letter*. Was the performance more extensive? It would seem not, from another passage of the "Reply," directly contradicting, on this point, the passage above cited, which says he read the "*letters* to Dr. Boott above transcribed." I quote, now, as follows:—

"It will not escape observation, that I was so far from desiring or permitting any influence, that might chance to attach to my opinion, to operate silently, in London, to the disadvantage of these gentlemen, that I communicated to Mr. William Boott himself the *only letter*, expressing any opinion, which I had written previously to Mr. Wright Boott's death." [L. p. 179.]

Now, we are constrained to ask, *which* of the *two letters*, above printed from the "Reply," (both of which, it asserts, in one place, were read to Mr. William Boott,) was, in fact, the "*only letter*," which, it confesses, in another place, was ever so read? And, suppose that letter to have been fully and fairly read,—*which* is more than I would undertake to avouch,—*what did I know about it?* My former statement shows:—

"*The contents of the letter I am not fully informed of.* Mr. William Boott did avail himself of the offer to call and hear it read, and Mr. Lowell read to him, at the same time, a draft of a letter to Mrs. Boott, which, it was understood, had not yet been sent; but Mr. William Boott is unable to recollect the contents of these letters, except that they went to explain the circumstances, under which property of the estate had come to Mr. Lowell's hands, as security for Mr. Wright Boott's note, which he took and held as a trustee, without fault on his own part; and also were calculated to convey an impression that Mr. Wright Boott's state of mind was not one of insanity." [B. p. 98.]

It will be observed that I speak of a letter *sent* to *Dr. Boott*, and of a letter *intended* to be sent to *Mrs. Boott*. Now, Mr. Lowell says, that the draft of the letter to *Mrs. Boott* was read at a different time, and several months later. [L. p. 179.] If so, it only goes to show how little I really knew about Mr. Lowell's writings from any statement of Mr. William Boott to me. It will also be observed, that no explanation of the "circumstances, under which the property of the estate had come into Mr. Lowell's hands," is contained in either of the two letters to Dr. Boott. This must have been in the subsequent letter to *Mrs. Boott*. All I could have known, then, so far as appears, in March, 1845, (the date of the inquest,) concerning the particular letter to *Dr. Boott*, which Mr. William Boott had heard read eight or nine months before, was that it was "*calculated to convey an impression* that Mr. Wright Boott's state of mind was not one of insanity." I had no idea that a strong and positive opinion to that effect, purporting to be founded on Mr. Lowell's personal observation, had been expressed; nor that any thing had been said to fore-stall Dr. Boott's opinion respecting accounts not then exhibited, or respecting the executor's general management of the property; still less that a state of "*exasperation*" against Mr. J. Wright Boott, "*quite inconsistent with a conscientious belief*" of his insanity, and requiring that he should be "*shielded* from the consequences of merely *technical omissions*," had been attributed to those members of the family, who ventured to maintain that a state of insanity was his unhappy condition. Nor do I believe, now, that any such imputation, upon Mr. William Boott, as well as myself, was ever made

known to him by Mr. Lowell, in the form in which it now appears. If it had been, I think, I should have heard of it at the time ; and in that case, I am sure, it must have led to a call for further explanation. In the mean time, during that year, (1844-45,) I had held many private conversations with Mr. Lowell. No such ideas were ever conveyed to me by him. My inferences, from all his conversations, were such, respecting his opinions of Mr. J. Wright Boott's state of mind, as I have above expressed ; and the case, if doubtful before, was now illustrated by the fact of a suicide, particularly shocking in the manner of its execution. Indeed, Mr. Lowell does not pretend that he ever *said one word to me*, that should have prepared me for his testimony to the jury, on the point of sanity, *except* in the conversation two hours before the inquest.

Now let us look to that. It was *then* that he informed me,—not only of the suicide and its horrid circumstances, but, also,—of Mr. Boott's sending for him, and his accompanying Mr. Boott, to see the postmaster, about the missing letter, some ten days before. In answer to my remark, that I thought Mr. Boott had been quite tranquil since the settlement of the accounts, Mr. Lowell said, “ He has been quite tranquil, *until about ten days ago*, when he *got an idea* that his brother William had *stolen* a letter of his,” &c. “ *I found it impossible to reason him out of this idea,*” &c. Now, what was this, so far as it went, but positive information to me of a most *irrational excitement, existing within ten days, known to Mr. Lowell, and spoken of, indirectly, as an instance of insane delusion?* I afterwards remarked, “ All, that you have now told me, serves to confirm the idea, I have long entertained, as you know, that Wright was insane.” He said, “ I don't know about that. Do you think there ought to be an inquest?” I replied, “ By all means.” [Ante, pp. 687-8.]

This, is what Mr. Lowell calls, a *refusal to assent to my inference from the suicide.* Was it, in truth, any thing more than an expression of slight hesitancy, about a direct admission of the fact, connected with the question of having or

not having an inquest? The notice of my own opinion was not as *an inference "from the suicide,"* merely, but as an opinion *previously formed*, well known to Mr. Lowell, and *confirmed* by the new facts he had stated. This notice was perfectly explicit and distinct. Now, if *his* opinion were clear and distinct the other way, and he meant to act fairly towards me, why did he not, then, declare himself? Instead of doing so, he says, "*I don't know about that. Do you think there ought to be an inquest?*" For what purpose, let me ask, except to resolve all doubts, respecting the sanity of the deceased? So I understood him, certainly, when I replied, "*By all means.*" And did not Mr. Lowell well know that I so understood him?

Let the reader look to the whole conversation, as above detailed, [Ante, pp. 687-8.] and, remembering what Mr. Lowell then told me, respecting Mr. Boott's recently disturbed state of mind, (disturbed by nothing but a *causeless suspicion of a theft by his own brother,*) and this followed by such an act of suicide,—let him judge, for himself, whether I could possibly have inferred, from Mr. Lowell's language, that he entertained, nevertheless, that clear and decided opinion of Mr. Boott's perfect sanity, which he admits he expressed to the jury. If not, I ask again, whether any fair-minded man, about to conduct that inquest at my request and in my behalf, knowing my decided opinion on that subject, and never having expressed to me any decided opinion of his own to the contrary, would have left me, after such a conversation, to engage in that service, without saying, in so many words, that he should feel it to be his duty to testify distinctly against my opinion, and not to have a verdict of insanity found, if he could prevent it? Would any fair-minded man have so testified, as Mr. Lowell testified, without notice to me, and have wholly omitted to suggest to the jury, that other persons had long considered the deceased insane, or even to allude to the case of recent excitement at the post-office, which he had just mentioned to me? These same questions, substantially, I

formerly put to Mr. Lowell ; and the reader has seen all the answer he gives to them.

And now let me put one other. Would any fair-minded man, under such circumstances, have given to the jury the impressions, he gave to them, concerning ill conduct by myself and others towards the deceased, and have confirmed those impressions by showing the *outside* of a letter, described as the last act of the deceased, and as *containing charges* which must prevent its being read, because the deceased was not there to substantiate them, without affording to the parties, so charged, an opportunity to show to the jury that the writer was in a deranged state of mind, and that the charges, contained in the letter, were founded on nothing but his own delusions ?

Had Mr. Lowell come out, like a man, and said to me, as he says now, that, in his belief, Mr. Boott was just as sane as I am, the consequence would have been, that I should have said, at once, " If that is the case, I must go through the disagreeable task of attending this inquest in person." I should have told Mr. Lowell, that I must invite the jury to consider that question ; and that I could not leave it to him to draw them in an opposite direction.

The " Reply" avers, indeed, that,—

" So far from *endeavouring* to impress upon the jury, that Mr. Boott's suicide was attributable to the dissensions in the family, I [Mr. Lowell] brought distinctly to their notice, that both in the matter of his accounts, and in that of the sale of the house, all difficulties had been adjusted, and his mind relieved upon those points, and that I ' did not know of any recent cause of trouble.' " [L. p. 15.]

What he brought distinctly to the notice of the jury, and what effect he produced upon them, their testimony best proves. That question has been abundantly considered. [Ante, Ch. 9, to Ch. 14.] What he avers, above, as to his not *endeavouring* to produce such impressions, I place on the same footing with his denial that he ever " gave, *directly or indirectly*, any *opinion* or advice, that *could influence her* [Mrs. Boott's] *conduct* towards her children." What he did

write, to *Dr.* Boott, with whom *Mrs.* Boott was then living, in two particular instances, appears, above, from his own showing. What effect it produced, and why it produced that effect, I shall distinctly show. But I acquit him, in both cases, of a *direct intent* to accomplish the *particular mischief*. He meant only to *effect his own ends*. I do not charge him with having been *malicious*, towards any one, but, simply, selfish in the extreme. He did not desire to perpetuate ill feelings in the family, which he says I charge him with ; [L. p. 166.] still less did he desire to raise up ill feeling against himself in any quarter, if he could avoid it. Neither did he *desire*, perhaps, to satisfy the jury that *I*, particularly, had been the *cause* of Mr. Boott's death. But, he had desired to have the accounts settled as they were settled ; he desired that they should remain undisturbed ; he desired that there should be no further inquiry into Mr. Boott's executorship, and his own dealings with the executor ; and he especially desired to have it believed, that Mr. Boott was perfectly sane, in all his previous transactions, notwithstanding the presumption against it, afforded by a course of strange conduct during life, and by the manner of his death. If those ends could be accomplished, and accomplished in so quiet a manner as not to expose himself to harm, nor make known to me the means of their accomplishment, what cared he for collateral consequences to others ? To whom, or to what, the death of Mr. Boott might be attributed, *provided it were not attributed to insanity*, was quite a secondary consideration, which did not affect Mr. Lowell. Since he chooses, therefore, by making his declared intentions and motives so prominent, to invite the discussion, I shall submit to the reader, whether I have not, now, furnished him with the true key to Mr. Lowell's course of proceeding, just before, and at, and ever after, the inquest. Was I not right, when I said that the question of Mr. Boott's mismanagement as an executor, and the question of the truth of the account, which Mr. Lowell prepared for him, lie at the bottom of this controversy ?

The query put to me—" Do you think there ought to be

an inquest?"—was put, in that remarkably ingenuous manner, which I have, several times, observed in Mr. Lowell, as if the idea was one, that had then, for the first time, struck him. Now one of Dr. Jackson's letters, extracted above from the "Reply," [Ante, pp. 681–2.] informs us, that the propriety of an inquest had been, but a few minutes before, a subject of conversation, between Dr. Jackson, Mr. Lowell, and Mrs. Lyman, at the house, from which Mr. Lowell had just come. "After a time," says Dr. Jackson, "*I suggested the propriety of having a coroner's inquest*; at which she [Mrs. Lyman] manifested some reluctance." [L. p. 187.]—"They [Mrs. Lyman's remarks] were occasioned only by *some suggestion*, above referred to, *in respect to his sanity, or insanity, which arose in discussing the question of a coroner's jury.*" [L. p. 188.] We may ask, by the way, how came the question of "sanity or insanity" to be suggested, if Dr. Jackson and Mr. Lowell both thought there was no reasonable ground for such a question? And who suggested it? However that may be, another of Dr. Jackson's letters states, that, when he and Mr. Lowell parted, in walking from the house, "you [Mr. Lowell] went down Court-street *to take measures in reference to the sad event which had occurred;*"—and after they had met, again, at Mr. Lowell's house, at the time when Mr. Lowell was seen with the letter in his hand, Dr. Jackson says,—"*At the same time you stated to me that you had seen Mr. Edward Brooks, since you had parted with me, and that you had also taken some measures in relation to a coroner.*" [L. pp. 18, 19.] I hold it to be certain, therefore, that Mr. Lowell came to my office fully impressed with the necessity of an inquest, in Dr. Jackson's opinion, and with the idea of a trial of sanity or insanity connected with it; and that he came for the purpose, not merely of telling me of the suicide, but of sounding me on the subject suggested to him by Dr. Jackson, and of *taking measures for the inquest*, if he found an inquest to be unavoidable.

He may have been in hopes that I should discourage

the idea, and that he might see his way to a funeral without any inquest at all, throwing the responsibility of that proceeding upon me. That, I have no doubt, he would have much preferred to the risk of an inquest, which *might* find "*suicide in consequence of insanity.*" But, if my decision should be in favour of an inquest, his next intention, I have no doubt, was, to *secure to himself*, if possible, the *management* of that inquest; for, no sooner had I answered to his question,—“By all means,”—than he replied by asking “*Where is the coroner to be found? I don't know where to find one;*”—[B. p. 145.] indicating, very plainly, his formed intention to search for such an officer. And, since he says he had not then received Mr. Boott's letter, and was not aware that he was named as his executor, I beg to ask, what he had to do with an inquest? and why had he formed the intention of going himself to the coroner, before I had made any request that he should do so, or expressed any desire to avoid a personal attendance?

He had already ascertained, as appears by one of Dr. Jackson's letters, [L. pp. 187–8.] what Mrs. Lyman's testimony would be, if she were called as a witness. Had he not satisfied himself, also, that the women in the house would give no opinion contradictory to her, on the point of Mr. Boott's sanity? Mr. William Boott, he knew, was at Lowell. It was easy to have an inquest holden before that gentleman could arrive. All he had to do, further, was, to contrive to get *me* out of the way, and the course was his own. In this instance, I must confess, that I fell, or rather threw myself, most unsuspiciously, into Mr. Lowell's trap, proposing, even of my own accord, not to be present. The friendly alacrity, with which Mr. Lowell embraced that offer, and took upon himself the entire burden of so unpleasant an office, would have been, to a bystander, delightful to behold. It ought to have opened my eyes; but it did not. Strange as it may seem, after the hints I had had, I still confided in Mr. Lowell. But I had no suspicion, it will be remembered, of numerous facts, since discovered, which these pages disclose; and, particularly, no suspicion of any interested motive to govern, or bias, his course at the inquest.

CHAPTER LXV.

MR. LOWELL'S CONDUCT RESPECTING A NOTICE TO MR. WILLIAM BOOTT. HIS ALLEGED MOTIVES. SOME CORRECTIONS BY MRS. LYMAN.

Mr. Lowell has, all along, disclaimed, most emphatically, any personal interest, or interference, in the difference, which, unhappily, arose in the Boott family, respecting Mr. J. Wright Boott. According to his own account, he was the common disinterested friend of all parties. The general belief that he was so has been his chief strength. It has given to his statements undue influence with certain members of the family, who had no opportunity of judging for themselves, and with the community generally, for the same reason. This has enabled him to play his game, thus far, with a success almost equal to its boldness; for there are games, at which face and tone are said to be more effective than a strong hand.

He declares, in one of his letters to me, that he was "no party to the difficulties which have caused so much pain in Mrs. Boott's family." [B. p. 17.] I shall show, on the other hand, when I come to that question, that he was, behind the curtain, a principal party to all the difficulties of the year before Mr. Boott's death, as well as since his death, and that he is, now, the chief cause of painful estrangements, still existing, between a mother and children, whose mutual attachments were of the tenderest description.

In another letter to me, printed above, he says, "The kindness that I experienced, in early life, from Mr. and Mrs. Boott, has endeared to me all of the name." [Ante, p. 633.] Mrs. Lyman, Mrs. Brooks, and Mr. William Boott were, of course, embraced in this circle of affection. But it seems by no means to have been confined, literally, to those who bore, or had borne, the name of Boott. The circle was ex-

pansive enough to include collateral connexions. For me, also, it seems, that Mr. Lowell cherished a sentimental attachment; since he speaks, in his pamphlet, of a certain "linger-
ing tenderness," which, alone, prevented him from treat-
ing, as he says it deserved, my application, in December,
1846, for an explanation of the course, then first made
known to me, which he had taken at the inquest. [L. p.
174.] How long this tender sentiment continued to linger
upon him, to his personal disadvantage, does not distinctly
appear. It would seem,—not only in my case, but in that of
the other members of the family, who are above named,—to
have thoroughly exhaled in the course of his "Reply." At
the time, however, of which I now speak,—the date of the
inquest,—this unrequited tenderness had suffered no abate-
ment. We shall see the acts of benevolence, to which it
led.

The "Reply" admits an express undertaking by Mr. Lowell, in his interview with me, to give notice to Mr. William Boott, the moment he should arrive from Lowell. [L. p. 184.] He was expected to arrive, and did arrive, in the cars, at about six o'clock that afternoon. Mr. Lowell had said to me, in reference to the notice, "Give yourself no trouble about that. *I will be at the cars, or have some one there*, to notify him, the moment he arrives, *and will make all previous arrangements*;" and when, on parting from him at the door of the coroner's office, I asked,—"Do you want any thing more of me?"—his last word was,—"*No,—I will take care to notify William Boott*,"—that delicate and friendly duty being so strongly impressed upon his mind, by the affectionate sentiments above declared, that he could not restrain himself from repeating the assurance. [Ante, p. 688.]

Any step on my part, was, of course, prevented, by my implicit reliance on Mr. Lowell. I remained at home, with Mrs. Brooks, expecting that Mr. William Boott, as soon as the inquest was over, would call upon his sister and myself. But when nine o'clock had passed, and I heard nothing, I

thought it best to go round to Mr. William Boott's lodgings, to inquire after him ; and I found this gentleman, at that late hour of the evening, uninformed, not only of the inquest, which had then been *closed* several hours, but even of his *brother's death* !

Now what says the "Reply" to this ? "I offered to inform Mr. William Boott, *not of the inquest*, but of the *suicide*." [L. p. 184.] Of course Mr. Lowell did not *offer, in terms*, at the interview with me, to inform him of *the inquest*, because none had, as yet, either been held or appointed. It had only been agreed between us, that he should call upon the coroner for the purpose of having one appointed. But my understanding was,—and did not Mr. Lowell well know it ?—that Mr. William Boott would have the notice *before any inquest* should be actually holden. The "Reply," however, declares as follows :—

"I distinctly stated to Mr. Brooks that *the inquest would be held that afternoon, and as early as possible*, out of respect to Mrs. Lyman's feelings, and that the jury might see every thing as nearly in its original condition as possible." [L. p. 184.]

I am sorry that my recollections do not distinctly bear out Mr. Lowell's distinct averments on that head. How should he have said any thing about the *time*, at which an inquest would be holden, *before he had seen the coroner*, whose business it was to appoint a time, and to summon a jury ? What great difference could it make, in respect either to Mrs. Lyman's feelings, or to the condition of every thing in the house, whether the inquest were holden at about four o'clock, or at about six,—at which latter time it was known that Mr. William Boott would be in town ? The "Reply," moreover, admits, that *no steps were taken* by Mr. Lowell towards informing Mr. William Boott of his *brother's death*; and this, it is admitted, he did, positively, undertake. Such an omission seems the more extraordinary, considering that Mr. Lowell's sole motive of action was, as he alleges, his tenderness of feeling towards Mr. William Boott and myself. The excuse is a conflicting tenderness of feeling towards Mrs. Lyman :—

"I was the last witness examined, and as soon as I got through I called upon Mrs. Lyman. She was in such distress it was impossible to leave her, till the arrival of one of her nephews. So much time had thus been taken up, that it was dark before I left the house and the cars from Lowell had long since arrived. [L. pp. 19, 20.]

But "one of her nephews," and, as I understand, the nephew alluded to, (Mr. Kirk Boott,) it seems, on Mr. Lowell's showing in another place, was himself, all the while, *present at the inquest, and heard Mr. Lowell testify.* [L. p. 13.] He was at hand, therefore, to take Mr. Lowell's place, in tendering such consolation as he could to Mrs. Lyman, the moment Mr. Lowell had discharged his imperative duty as a volunteer witness. Besides, the pressure of the duty towards Mrs. Lyman, (who was consoled by Mr. Lowell with the information that her brother's dying breath charged her with being *a spy in the house,*) was not so urgent, after all, but that Mr. Lowell found time, after the verdict, as we learn from his own witnesses, to have some considerable talk with the jury in order to enlighten them further, concerning the strange things they had heard and witnessed. [Ante, pp. 82, 83.] Hence, only, was it "dark," when Mr. Lowell left the house, though the inquest began at four o'clock, and its necessary business need not have occupied one hour.

But the final reason for omitting the promised notice must be entirely satisfactory. "I had no doubt that Mr. William Boott had *heard* of the event, which was by that time *known all over the city!*" [L. p. 20.] Undoubtedly it was; and Mr. William Boott was one of the very few individuals, among one hundred and twenty thousand inhabitants of Boston, who was ignorant, at nearly half past nine o'clock that evening, (though he had been in the city *three hours,*) that his own brother had destroyed himself, in the course of the *preceding night*, and that an inquest had been *concluded*, which found a verdict of suicide, but,—as appeared on the following morning,—did not find the act to have been one of insanity, and scarcely omitted to find that he, himself, as well as I, had been a culpable cause of the death !

Mr. Lowell, however, makes a great parade of the extraordinarily kind feelings, which influenced all his movements in this matter :—

“ If I took immediate measures for having an inquest held, it was, as Dr. Jackson and Mrs. Lyman well know, that the fact of Mr. Boott’s *suicide* might be established, before any vulgar rumors should assign *another cause* for his violent end. Mr. Brooks declined being present from motives of delicacy, which I could well appreciate, and which would apply with at least equal force to Mr. William Boott. It never occurred to me that either of them would dream of being present. [L. p. 184.] ”

In this view of the case, he says, he is confirmed by Dr. Boott. Now I take leave to suggest to Mr. Lowell, as a good general rule, in case he should, ever, again be called upon to perform any like kind offices for his particular friends, that it is well to allow, to persons of full age and ordinary discretion, an opportunity to judge for themselves, in their own affairs ; or, if not, at least to give them notice of the manner, in which he intends to manage their affairs for them. “ Motives of delicacy ” might withhold parties, having a particular interest, from attending an inquest, under some circumstances ; but I should, certainly, in my own case, overcome any such morbid reluctance, under other circumstances ; and I am not able fully to appreciate, perhaps, the value of the distinction, between a vulgar rumour that I had cut the throat of a brother-in-law, (which Mr. Lowell, thus delicately, intimates as one of the hazards of the case,) and a vulgar rumour that I had been the death of him by unjust accusations, groundless calumnies, and a course of malignant persecution. The chief difference, in my estimation, lies in this ;—the one suggestion, if it be false, is, in most cases, easily disproved ; the other, from its nature, is more difficult to grapple with. For the one species of slander there is a legal remedy ; for the other none.

As to what actually passed at the inquest, I have nothing to add to the statements of the jurors, and of Mr. Lowell’s own witnesses. [Ante, Ch. 14.] His many excuses, however, seem to deserve notice. He says,—

"Mr. Brooks, most unjustly, charges me with having been a *self-called witness* at this inquest. *Literally I no doubt was so*; but that I was so for any other *purpose* than one of *kindness to him and Mr. William Boott, and to obey the clear dictate of duty*, is wholly untrue.

"I was, as Mr. Brooks well knows, the only person who had, in Mr. Boott's own hand writing, evidence of his *intention of suicide*. What would Mr. Brooks, with his predisposition to impute to me base and dishonorable motives, have said, if I had, by voluntarily absenting myself, *suppressed this evidence?*" [L. p. 188.]

There were several ways, in which Mr. Lowell might have relieved himself from so unpleasant a dilemma. One would have been to *lay the letter before the jury*, so that they might judge of it for themselves, and determine what further inquiry, concerning the deceased's state of mind, was called for by its extraordinary statements. I say he might, simply, have laid the letter before the jury; for it was *the letter*, not Mr. Lowell, which proved the *intention of suicide*. Mr. Lowell could prove nothing, but that the letter was in Mr. Boott's hand-writing,—a fact, which many other persons could have proved equally well,—and that he had received it at some indefinite hour of that day, by some indefinite means, through the post-office,—a fact, which is entirely immaterial. Another mode would have been to *send the letter to me*, or to *give me notice* that he had such a letter, and of its contents concerning me, and I should have known, very soon, what to do in that case. Where was the kindness to me and to Mr. William Boott, in Mr. Lowell's making himself a witness, *without showing the letter*,—declaring that "it contained charges, which he [the writer] was not here to substantiate,"—connecting those charges, by averment and suggestion, with notions of *harsh and improper conduct* towards the deceased, in relation to his accounts,—and, at the same time, declaring, concerning the author of those dying declarations, that he [Mr. Lowell] "has never discovered *any thing indicating insanity* in the deceased," *without suggesting that other persons* had long felt assured of it.

The particular kindness to me, and to Mr. William Boott, intended by the "Reply," is, I presume, (if I rightly interpret its innuendoes,) that Mr. Lowell's efforts, by establishing

the fact of *suicide*, tended to prevent "any vulgar rumours" that we had crept into Mr. J. Wright Boott's chamber, at night, and assassinated him in his bed. But was *Mr. Lowell's testimony* necessary for that? According to Dr. Jackson, he and Mr. Lowell "found Mr. Boott's corpse lying on the bed, under such circumstances, and with such accompaniments, as showed that he died by his own hands." [L. p. 187.] Now, I am unable to see, why the same sight, with the testimony of the witnesses in the house, who first found the corpse in that situation, would not have satisfied a commonly intelligent jury of the same fact; since it was so plain, by mere ocular inspection, to Dr. Jackson and Mr. Lowell.

The truth is, that there is not one particle of testimony, given by Mr. Lowell, *according to the official report*, which was legal evidence of any thing material to be proved, *except as it bore on the question of sanity*. In that view, it was quite material for him to state, as he did, that he had known the deceased for nearly thirty years; that he had, formerly, been in business with him; that the "deceased was in the habit of consulting witness about his affairs more than any one else;" and that he "has never discovered any thing indicating insanity in the deceased;" [B. App. p. 59.] and it was quite immaterial to have added the further information, given to the jury, which does *not* appear in the official report, except as it tended to account for the fact of a suicide from some other cause than mental derangement. Mr. Lowell knew nothing else, touching the subject of inquiry, which the inhabitants of the house did not know better, except his own possession of a letter, and of a will, which would speak for themselves; and these he did not allow to speak. But, since it is suggested, that this was all done from the overflowings of kindness, to rescue me from the danger of an indictment for murder, perhaps I ought to respond with heartfelt gratitude for the preservation of my life; and my lack of that sentiment can only be set down for another proof of the singular perversity and hardness of heart, which the

"Reply" has found out to be among my distinguishing qualities.

There is one little error, in my report of what happened at the inquest, as derived from Mrs. Lyman, which I am bound to correct, according to her request, in the letter heretofore mentioned. [Ante, p. 68.] My former account was as follows:—

"Mr. Dexter obtained for me the official report of the evidence at the inquest,—a copy of which is annexed. (App. No. 42.) It will be observed, that Mrs. Lyman's testimony, as there recorded, is, 'that the deceased, John W. Boott, is her brother, and that *she resided with him ;—has resided with him since March, 1844 ;—never has discovered any thing like insanity in him.*' This, of course, would give the idea, that she had been in the habit of seeing him constantly during the year, and so had means of forming an opinion respecting his state of mind. But, on examining the original, I found that a sentence, or part of a sentence, following this, was crossed out; the words, however, were still sufficiently legible to see, that it was the beginning of a statement *qualifying* the last remark, and to the effect, that she had *not seen her brother, or had any communication with him*, during the whole year. On inquiry of Mrs. Lyman, I learnt, that, when she had made that statement, and was proceeding farther to show how little opportunity she had had of discovering marks of insanity, if it existed, (for in truth, she had hardly seen her brother for many years,) she was interrupted by a remark of Mr. Lowell's, that *he supposed that irrelevant*; and, consequently, she forbore to speak of the conduct of the deceased towards herself, feeling that it would be discreditable to her brother's memory, (except as evidence of insanity,) and being told that such matters need not be stated. The sentence, however, which she had begun, or a part of it, had been already written down by the foreman, and she requested, that, if it was immaterial, it might be left out. It was accordingly crossed out, and she proceeded as her testimony now stands in the report. If the inquiry, thus opened by the witness, had been pursued, instead of being suddenly stopped, and proper questions had been put to her, to draw out what she knew, she would have been obliged, though reluctantly, to state facts, concerning the conduct of the deceased towards herself, which every juror would, probably, have thought quite unaccountable, except on the idea of a partial insanity. All this, however was shut out." [B. p. 155.]

Mr. Lowell denies having interrupted Mrs. Lyman, [L. p. 186,] and denies having done any thing to influence the verdict of the jury, except testifying as his duty required. [L. p. 21.] On this point Mrs. Lyman corrects me, as follows:—

"Page 155, you say, I was *interrupted* by Mr. L. This is wrong. I replied to the juror, who questioned me, that *I had lived in the house a year with Wright, and did not believe him insane.* I then turned to Mr. Lowell, and said, 'perhaps I should state on what terms I had lived there.' *Mr. Lowell said 'it did not bear upon the case.'* I added, *during the year, I had never seen my brother.* The juror repeated—'Never seen your brother for the whole year?'—I said 'No,' —and, perceiving great astonishment manifested by the jurors, and fearing to do Wright any harm, I begged to have no record made of the fact."

The reader will judge how material this correction is ; and whether Mr. Lowell's saying, when appealed to, that the extraordinary terms, on which Mrs. Lyman had been permitted to live in the house, "did not bear upon the case," does not justify the substance of my charge ; namely, that, by his interference,—though, as it now appears, upon a question of advice put to him by the witness, and not by an actual interruption,—he did, upon his own responsibility, cause the exclusion of pertinent evidence of a series of *facts*, strongly tending to prove the insane condition of the deceased, contrary to the *mere opinion* of a witness, who, though living in the same house, had not seen him for a year, and had conversed with him *but once*, I believe, for *sixteen years!* Yet, says Mr. Lowell, "It is utterly untrue, that I interfered with, or attempted to influence, that verdict at all, except by my own testimony, under the obligation of my oath!" [L. p. 21.]

I will now complete the sum of my errors, in reporting Mrs. Lyman, so far as she has informed me. The following is my former account of my recollection of her statements of certain conversations with Mr. Lowell :—

"We did so, and found Mrs. Lyman at the house, and two female friends with her. The conversation turned, among other things, upon the inquest, which, Mrs. Lyman said, *was held about four o'clock*; and that she and the two women (meaning the servants,) and Mr. Lowell, had been examined ; and that Mr. Lowell *produced the letter.* I asked what letter. She said the letter which Wright had written the night before. I said you must be mistaken about that, for Mr. Lowell told me, at two o'clock, that there was a letter, supposed to have been put into the post-office, but that nobody had got it. Mrs. Lyman replied, "it was to Mr. Lowell himself, and he had it at the

inquest." Being still incredulous, I asked whether she was present when Mr. Lowell testified, and saw the letter herself. She said, no, but that, after the inquest, Mr. Lowell told her about it, and told her some things that were in the letter. I asked what they were. She said, "I was charged in the letter with being in the house as a spy, and you with placing me here for that purpose." She was at that time entirely ignorant that the letter contained a will; and could recollect nothing more of its contents, as stated by Mr. Lowell. She afterwards told me, that Mr. Lowell said it was *rather incoherent*—an expression, which, at a subsequent interview, he was unwilling to admit that he had used, preferring then to say, *vague and indistinct*."

[B. p. 148.]

Mrs. Lyman's correction is as follows:—

"A more important mistake occurs on page 148. The facts, after my examination, are, that Mr. Lowell came to me, and said, 'The inquest is over—the verdict, suicide.' He then told me he had received a letter, written by Wright the night previous, and in reply to my question, he added, that the letter was a long one—that it was a review of the family quarrels from the beginning,—that *Wright charged me with being a spy in the house, placed there by you,—that you were not an honest man, though not pecuniarily dishonest,—and that he dwelt upon his grievances very much.* Upon my asking the general tone of the letter, *he said it was rather incoherent.* I never heard, till sometime afterwards, that the letter had been produced at the inquest; and you then told me what the coroner told you, as stated in the book. I left the room as soon as my examination closed, and no letter was seen while I was there. These are serious mis-statements, so far as I am concerned. I have my own notes to prove my accuracy, and the statement of J. W. B.'s letter, put down from memory, which Mr. Thwing confirmed as to substance. Upon it is Wright's refusal to read it."

To explain the latter part of Mrs. Lyman's statement, the reader should know that a letter, prescribing certain conditions, on which Mrs. Lyman was to be received into her mother's house, was written by Mr. Boott to her, about a year before his death. This letter, after reading, she was required to return to him, with her assent to the conditions, subscribed at its foot. Having no copy of the letter, she wrote down, soon after, as well as she could from memory, a statement of its contents, which she sent to her brother, with a request that he would examine it, and certify it to be substantially correct, if it was so. But Mr. Boott refused even

to read the paper, and sent it back to her, with a memorandum to that effect endorsed upon it. So that Mrs. Lyman was left without any evidence of the contents of a paper of conditions, which she had been required to subscribe, and by which she was expected to govern herself, except her own memory, and that of her friend, Mr. S. C. Thwing, to whom Mr. Boott had read the original. Was this, by the way, the conduct of a sane man?

In my foregoing report of Mrs. Lyman's statements to me, the only substantial error appears to relate to the fact of the production, at the inquest, of the letter, which Mr. Lowell had just received from Mr. Boott. It now appears, that Mrs. Lyman did not know, at the time of our conversation, whether it was produced there or not, and did not state to me that it was, although, it seems, I made that inference from something that was said. But, as to what Mr. Lowell said, respecting the contents and character of the letter, it appears that I at least did not *overstate* Mrs. Lyman's report of it.

It further appears, that Mrs. Lyman, while anxiously endeavouring to correct errors, still insists that Mr. Lowell, originally, said, that the letter was "rather incoherent." This, Mr. Lowell afterwards desired to qualify, by substituting the words "vague and indistinct." But his position in the "Reply" is, that this letter, (which we are not permitted to see,) is *proof* of the *sanity* of its writer,—Mr. Lowell, of course, fathoming, by adoption, the truth of its charges, since nobody imputes want of veracity to Mr. Boott. Upon the subject of the truth and rational character of the charges, I shall, presently, "enlighten Mr." Lowell. [L. p. 69.]

It appears, too, that I was mistaken in supposing that Mr. J. Wright Boott's paper of conditions prescribed, in terms, that Mrs. Lyman should live by herself, in her own apartments, and hold no communication whatever with him.

This paper I never saw, till it was printed by Mr. Lowell; and, although extraordinary enough in other respects, and containing matter, which strongly intimates that intention, it does not appear to contain such a condition, *in express terms*. This is another of the statements of my former pamphlet,

which I was requested by Mrs. Lyman to correct. I accordingly do it, now, in her own words, written *before the "Reply"* (in which the letter of conditions was printed,) *had made its appearance*, and, of course, while Mrs. Lyman had nothing to make the correction by but her own memory, and the memorandum above mentioned, which Mr. Boott refused to read. By that refusal, he undoubtedly meant that she should understand, that he did not intend to hold any communication with her, either verbal or *written*. The following is the correction, made by Mrs. Lyman :—

“ This, [my above-mentioned statement] is also wrong, *not as to the requirements*, but, as to their being *in the paper*. It was *at the time of his visit to me, at Miss Lane's, that he made them.*”

The reference is to a visit at the boarding-house where Mrs. Lyman then lived, (the first and only meeting of the parties for many years,) when the terms of Mr. Boott's consent to the admission, she sought, under her mother's roof, were verbally made known. Of these terms the greater part were, afterwards, reduced to writing by Mr. Boott, and signed by Mrs. Lyman on his requisition. His state of mind, perhaps, did not permit him to perceive how inadequately he had expressed himself, in the writing, on the point of total non-intercourse ; but Mrs. Lyman, to whom that condition had been verbally made known, as the basis of the arrangement, felt herself equally bound by it ; and he, also, did not forget to act upon it in its strictest sense.

This, I believe, discharges my whole duty of correction, on Mrs. Lyman's behalf; and the reader may now judge, from the several corrections made, here and elsewhere, how far Mr. Lowell's assertion is likely to be true, that he is “ authorized by Mrs. Lyman to *contradict nearly every thing*, stated as on her authority in Mr. Brooks's pamphlet.” [L. p. 140.]

CHAPTER LXVI.

MR. LOWELL'S CONDUCT IN RELATION TO THE LAST LETTER OF
THE DECEASED.

This letter Mr. Lowell has steadily refused to show, or read, to me ; but not, it appears, to all other persons.

He tells us, that it is "written with great calmness, as *befitted the occasion*, and evinces no aberration of mind." [L. p. 160.]

"The occasion" was this. The writer was on the point of taking his own life in a most appalling manner. This happened at night, in the dwelling house of his mother, of which the only other inmates were a widowed sister, (Mrs. Lyman,) and some female domestics. Was it not, by the way, an insane idea of preparing as shocking a spectacle as possible for the spies and enemies, by whom he believed himself to be surrounded, which prompted that form of suicide in that place ? This, however, is only a part of the general question of his insanity, not yet before us. At present, I confine myself to the letter, which this "occasion" produced, and to the conduct of Mr. Lowell concerning it.

We have seen, in the last chapter, what Mr. Lowell told Mrs. Lyman, respecting its tenor, immediately after the inquest ; namely, "that the letter was a long one ; that it was *a review of the family quarrels from the beginning* ; that Wright charged me [Mrs. Lyman] with being *a spy in the house placed there by you*, [Brooks ;] that you [Brooks,] were *not an honest man*, (though not pecuniarily dishonest;) and that *it dwelt upon his grievances very much.*" In respect to "the general tone of the letter, he said it was *rather incoherent.*" [Ante, 719.]

This, -(excepting the remark about its incoherency,) was the first account of the letter, which reached me. I heard it from Mrs. Lyman, when I called upon her, between nine and ten o'clock of the evening of the inquest ; and the

same account, substantially, was given, that same evening, by Mr. Lowell himself, to me and to Mr. William Boott, when we called upon *him*, immediately after leaving Mrs. Lyman. [B. p. 149.]

It now appears, by abundant evidence, heretofore detailed, [Ante, pp. 113, 114,] that Mr. Lowell, in fact, produced the letter at the inquest, and there, without handing it to the jury for inspection, either stated, or read from it, the writer's expressed hope that Mr. Lowell might not think the worse of him for the method, he was about to take, "to end his wretchedness." *That*, Mr. Lowell said, was "all that bore upon the case;" that the rest of the letter "related to private affairs;" and that he preferred not to show the letter, "as it contained charges, which he [the writer] was not here to substantiate." [Ante, p. 114.]

All this I was ignorant of at the time. I supposed, at first, from something, which Mrs. Lyman had said, (though, it now appears, she did not intend to convey that impression,) that the letter had been handed to the jury; but I also took it for granted that the jury must have found the suicide to have resulted from insanity. The next morning, I learned that there had been no such finding; and, to my surprise, that Mr. Lowell had testified to the effect that he had never had the least reason to think the deceased of unsound mind. But I was, on the same day, assured by him, that *nobody had seen the letter but himself*; and this, for the moment, of course, dispelled my previous idea that it had been shown to the jury.

This assurance from Mr. Lowell was in answer to my verbal request that he would permit me to see a letter, which, he had said, contained dishonourable charges against me, and which, he had also said, was written by a sane man.

I now extract from my former pamphlet, as follows:—

" His answer was, that he thought he ought not to show it; *that nobody had seen it but himself*; and that he did not attach the least importance to what was said concerning me. Nothing more passed between us at that time; but, on reflection, I was not satisfied with the position of the thing, and determined to make a formal request, which I did, the next morning, by letter, as follows:—

"MARCH 9, 1845.

"MY DEAR SIR,—The letter, which Mr. J. W. Boott wrote you on the last evening of his life has, as you have informed me, several allusions to myself. As this letter is known to be in existence, *although you have assured me that no one has seen it but yourself*, it would afford me satisfaction, in the peculiar circumstances of the case, to be allowed to peruse it. Will you let me know, by the bearer, whether I may be allowed to do so?

With great regard, your ob'd't,

EDWARD BROOKS.

"To this I received a prompt answer, as follows:—

"DEAR SIR,—I am not prepared, at present, to consent to your seeing a letter, which Mr. Boott, at so solemn a moment of his life, wrote to me, without expressing a wish that it should be communicated to any one. It is written with great calmness, as befitted the occasion, and evinces no aberration of mind.

I am, truly, your ob. sv.,

J. A. LOWELL.

"SUNDAY MORNING, MARCH 9th, 1845."

"Being still more dissatisfied, after this explicit declaration of the sanity of the letter, in Mr. Lowell's opinion, I consulted Mr. William Boott, and finally concluded to state the case to Mr. Franklin Dexter, as a friend, and to be governed by his opinion. I did so. Mr. Dexter thought, that I was entitled, under the circumstances, to see the letter, or at least to know, precisely, what it said concerning me, and that Mr. Lowell, on reconsideration, could not, in justice to me, refuse it; and he undertook to see that gentleman in my behalf. He did so, and the result of the interview was, that Mr. Lowell declined showing the letter, either to me, or to Mr. Dexter, as my friend, who asked it in order that he might judge for me, whether it required any notice. Mr. Lowell's alleged ground of refusal was, that it came to him confidentially; that it related to family matters, which had been closed, and ought not to be re-opened; and that, although he himself considered Mr. Wright Boott perfectly sane, yet, he gave no weight to his expressions concerning myself, because they were such, only, as one man was apt to use against another, with whom he had a difference; that the letter produced no effect on his own mind, and could not upon others, *as it was, and would be, unseen except by himself*. Mr. Dexter then asked Mr. Lowell, whether he would have any objection to making a statement, in writing, to the effect of what he had just said, and expressed his own belief that such a statement would be entirely satisfactory to me, as it would afford me means of contradicting any reports to my prejudice, by showing that Mr. Lowell himself attached no serious importance to the charges. Mr. Lowell answered, that he thought he should accede to that course. *provided* Mr. Brooks and Mr. William Boott would agree not to oppose the probate of Mr. Wright Boott's will on the ground of his alleged insanity. To this

Mr. Dexter replied, that he was not authorized to stipulate for either of us on that point, but that, from his conversation with me, he had no belief that we had any inclination to disturb the will, and that he would confer with us on the subject. The substance of this conversation I state, of course, on the authority of Mr. Dexter's report to me, and it will be found repeated, nearly as above given, in letters from Mr. Dexter, referred to below.

"The singularity of the *condition*, now proposed, as a consideration for the performance of what I regarded as a mere act of justice to myself, on the part of Mr. Lowell, connected with the other circumstances above mentioned, concerning the letter, and concerning what I had heard of the testimony before the jury, (though I had no idea, until more than a year after, of the extent, to which Mr. Lowell had gone,) made me desirous, before giving an answer, to know, more particularly, what the finding of the coroner's jury was, and upon what evidence it was grounded. With the view of ascertaining this, Mr. Dexter called, at my request, upon the coroner, and obtained a copy of the official report of the evidence, and also had some conversation with him on the subject, in the course of which the coroner stated, *that the letter in question was exhibited to him by Mr. Lowell, at the time Mr. Lowell had called upon him to procure an inquest; that he (the coroner) read the greater part of the letter, and was not restricted from reading the whole;* and that, among other things, it contained a statement, *that the writer had been driven to the act of self-destruction by unjust accusations of mismanagement of his father's estate.*

"This, when reported to me, I thought gave a graver aspect, and more importance, to the case, than any thing I had before heard, at the same time that it was, to my own mind, additional evidence of the insanity of the deceased. Mr. William Boott agreed with me in this opinion, and that any condition, as to the probate of the will, which might debar us from bringing the question of the testator's sanity to a legal test, while Mr. Lowell asserted it, and while a letter from the testator, containing so serious a charge against both of us, not only existed, but had been shown, was a wholly unreasonable thing for Mr. Lowell to ask. Mr. Dexter concurred in this view. We, therefore, instructed him to say, in our behalf, that we must decline pledging ourselves, under these new circumstances, to any particular course concerning the probate of the will, and must request once more, since the letter had been shown to one other person, at least, that we, or some friend in our behalf, might be permitted to see it. This Mr. Dexter did, in writing, as appears by the annexed copy of his letter to Mr. Lowell, dated March 11, 1845." [B. pp. 149-152.]

LETTER FROM F. DEXTER TO J. A. LOWELL.

[B. App. p. 60.]

BOSTON, March 11, 1845.

DEAR SIR:

You will remember, that, on Sunday, I called on you in behalf of Mr. Brooks, to repeat his request that he might see the letter, which

Mr. J. W. Boott addressed to you just before his death. You declined complying with this request, for reasons which you then stated. I then suggested to you the measure of your writing a letter to Mr. Brooks, stating that Mr. J. W. Boott's letter contained no charge against him, except such expressions as might naturally follow from the excitement of a personal difference, and which produced no effect on your mind. I stated to you that I was not authorized by Mr. Brooks to propose that measure, but that it occurred to me as one that would, probably, be satisfactory to Mr. Brooks. You answered, that you thought you should accede to that course, provided Mr. Brooks and Mr. W. Boott had no design of opposing the probate of Mr. Boott's will, on the ground of alleged insanity. To this I replied, that, although not authorized to answer for those gentlemen, on that point, I had no belief that either of them had the least inclination to disturb the will. There our interview ended, as I understood, with the expectation that I should inform you what were Mr. Brooks's and Mr. Boott's intentions, as to the probate of the will.

Since that interview, I have learned from the coroner, that Mr. J. W. Boott's letter was exhibited by you to him, when you called on him to procure an inquest to be holden. The coroner further informed me, that he read the greater part of the letter, and was not restricted from reading the whole, and that, among other things, it contained a statement that the writer, Mr. J. W. Boott, had been driven to the act of self-destruction by unjust accusations of mismanagement of his father's estate. This I reported to Mr. Brooks, and have since had an interview with him and Mr. W. Boott, who now request me to say, in their behalf, that, under the present aspect of the case, they must decline pledging themselves to any course in regard to Mr. J. W. Boott's will. They further request me, again, and under these new circumstances, to repeat the request, that they, or some friend of theirs, may see Mr. J. W. Boott's letter;—but, if you should still decline acceding to that request, that you will preserve the letter, as it may be important to them hereafter.

I will add, that, as you referred me on Sunday to Mr Loring, as your counsel, if I came in the capacity of Mr. Brooks's counsel, (an office which I then hoped to be able to avoid.) I have since called on Mr. Loring, who will state to you what was said between us.

I am, respectfully, yours, &c.

F. DEXTER.

J. A. LOWELL, Esq.

The answer to this letter was by Charles G. Loring, Esq. in behalf of Mr. Lowell. As it is a long one, I extract only the most material parts, referring to my former pamphlet for the residue:—

EXTRACT FROM MR. LORING'S ANSWER.

"Upon reading to me this letter, [Mr. Dexter's,] Mr. Lowell expressed the greatest surprise at these allegations,—assuring me that

the letter had never been out of his hands; that he had only read such portions of it to Mr. Pratt as were necessary to show that Mr. Boott had intended and inflicted his own death, and which he considered it his duty to read to him for that purpose,—the office of the coroner being to ascertain whether the deceased came to his death by his own hands, or those of another; *and that the letter contains no such statements as represented in your note;* and that he never made, or suggested, any proposal, or willingness, that the letter should be read by Mr. Pratt, excepting in replying to his request that he (Mr. L.) would have it with him at the inquest, when he assented to producing it there, if called for; understanding, as is obviously true, that the jury would have the right to demand its production and perusal, if judged necessary. And further informed me that, at the inquest, the letter was not unfolded; though, in reply to the inquiry whether he had one, he answered in the affirmative, and took it from his pocket; the jury thinking it not necessary to require knowledge of its contents, excepting in some particulars relating to the question of Mr. B.'s self-destruction, which were stated in the testimony of Mr. L., the minutes of which you have seen.” [B. App. p. 62.]

Mr. Loring then goes on to narrate an interview, just held with Mr. Pratt, in the presence of Mr. Lowell, in which Mr. Pratt admitted that he had said, that Mr. Lowell opened the letter in his presence, and read to him some extracts, or repeated some portions of it; but not that he had heard, or seen, any thing in it about me; that he had told Mr. Dexter, and others, that something had been heard by him about difficulties in the family, but he could not say whether he got the idea from the letter or not; that Mr. Dexter was mistaken in saying that he (Mr. Pratt) said that he saw or heard the greater part of the letter; that it was a very long letter, and very little was read to him; that he did not know that Mr. Brooks's name was mentioned, and had no idea whether the allusions were favourable or unfavourable.

To this Mr. Dexter made a brief reply, the substance of which lies in the following sentence:—

EXTRACT FROM MR. DEXTER'S REPLY.

“I now state, in brief, that I am quite sure I reported Mr. Pratt correctly, in substance, with the single doubt whether he said that Mr. Boott stated, in terms, that the unjust accusations against him had driven him to suicide, or whether those accusations were stated in such connection as to lead to that inference. If the latter was the case, it is a mere verbal difference.” [B. App. p. 64.]

This terminated all personal applications for the letter. Some months afterwards, I learned that Mr. Lowell denied ever having said that the letter contained a charge of dishonesty against me. In consequence of this, I applied to Mr. Dexter for information of what was said to him, and received the following answer :—

LETTER FROM F. DEXTER TO EDWARD BROOKS.

[B. App. p. 64.]

BOSTON, Sept. 14, 1845.

MY DEAR SIR :

There cannot be any doubt that the letter, which Mr. J. W. Boott addressed to Mr. J. A. Lowell, on the day of his death, contained a charge of *dishonesty* against you ; for, when I called on Mr. Lowell, at your request, on the Sunday succeeding Mr. Boott's death, to ask that you might see that letter, I made the request to Mr. Lowell, distinctly, upon the ground that he had told you that the letter contained such a charge. I urged, that, after such a declaration from him, you had a right to see the letter. Mr. Lowell did not deny that the letter contained such a charge, nor that he had told you so ; but declined showing it, on the ground that it was confidential, *and that he had not mentioned to any one else that it contained any charge against you*. I think it is impossible he could have answered as he did, if, in fact, the letter contained no such charge ; and I am quite surprised that there should be any question of it.

Mr. Lowell, in the course of the interview, offered to make some statement to me relating to the letter, confidentially ; but having called as your friend, I declined hearing it, if I were not at liberty to repeat it to you.

I do not remember what point he proposed so to state ; indeed, I doubt if he went far enough to enable me then to understand.

On my repeating to him my wish that you might see the letter, or that he would give an explanation of its contents, Mr. Lowell said that he should not object to saying, in writing, that the letter contained no charge against you of dishonesty in *pecuniary* matters, but only such things as one man says of another, with whom he has a quarrel, and that it had not produced any effect on his, Mr. Lowell's mind. This statement, however, Mr. Lowell said he would make *only on condition* that neither you, nor Mr. W. Boott, should dispute the probate of Mr. J. W. Boott's will.

Yours, very truly,

FRANKLIN DEXTER.

EDWARD BROOKS, Esq., Boston.

The reader hardly needs to be reminded that the course of events, and the progress of rumours concerning the cause of

Mr. Boott's death, connected with his last letter, compelled me to become an opponent of his will, as the only means, left, of bringing to a legal trial the question of the sanity of the testator, and with the purpose of demanding the letter from Mr. Lowell, in the probate court, as an important piece of evidence. The demand was made, but was resisted, successfully, on technical grounds. I then withdrew my appearance from the cause; but Mrs. Lyman, to whom I had assigned all my pecuniary interest in it, took the cause, by appeal, to the Supreme Court, and there, by advice of her counsel, filed a bill of discovery, with a view of obtaining the letter in aid of her case. But, pending Mr. Lowell's plea to that bill, and before it came to a hearing, Mrs. Lyman voluntarily abandoned her suit; and I was advised that the law did not afford me any means of compelling a production of the letter. [Ante, Ch. 3.]

The length, to which Mr. Lowell has allowed himself to go towards endorsing the statements and accusations, declared by himself to be in that letter, may be judged of, not only by the tenor of the "Reply," (which, in effect, argues that they were well-founded and true,) but, more briefly, by the following extract from an affidavit sworn to by him in the probate court :—

EXTRACT FROM MR. LOWELL'S AFFIDAVIT.

"That this deponent verily believes, and has at all times, since he first read the same, believed, that, neither in the hand-writing, nor in the style, *nor in the statements made*, nor in the reasoning contained, in said letter, is there any thing, to the knowledge or belief of this respondent, which tends to show that the said John W. Boott was not of sound and disposing mind and memory at any time; but, on the contrary, this deponent *verily believes*, and hath always, since he read the said letter, *verily believed*, that the said letter *strongly tends to prove* that the said John W. Boott was *sane when the same was written.*" [B. App. p. 68.]

That is, Mr. Lowell could not content himself with simply negativing the idea, that any thing in the letter might aid me in showing an insane delusion, but he volunteers to declare, upon his oath, that, in his belief, Mr. Boott's offensive state-

ments, as he had reported them, concerning me, *strongly tend to prove the sanity* of the man who made them. In other words, he swears, most superfluously, to his belief, that these statements are *well founded in fact*, (without which they, certainly, could have no such positive tendency,) and the "Reply," accordingly, pretends to make out a reasonable foundation for the belief of a sane man that the statements were true. When we come to the evidence on that point, the reader will have an opportunity to judge, whether this affidavit,—as well as the "Reply,"—does not "strongly tend to prove" that Mr. Lowell was prepared to stick at nothing, which might serve a present purpose in this case. But I confine myself, now, to Mr. Lowell's conduct as a gentleman, without inquiring into his private belief, or the foundation of Mr. Boott's hallucinations.

The pertinacious refusal to show me this letter,—containing nothing, so far as I was informed by Mr. Lowell, but family affairs, and statements particularly concerning myself, in family relations,—is distinctly admitted; and we have nothing, in the "Reply," but a profession of excellent motives, "as usual," to account for it:—

"I entertained at that moment sincere hopes, that the differences existing in the family would soon die out for lack of aliment; and there were passages in this letter tending to irritate the parties, and which, for that reason, I was desirous to withhold. My other motive was, that the letter contained matter of a strictly confidential character, not relating in any way to these disputes, which I did not feel at liberty to disclose. I, accordingly, politely, but steadily, declined to exhibit it." [L. p. 160.]

Now it will be observed, in the first place, that Mr. Lowell, at the outset, when deliberately answering, in writing, my request to see the letter, did not rest his refusal on *either* of those grounds. The only reason assigned to me, was, that Mr. Boott had written the letter, "at so solemn a moment of his life," "without expressing a wish that it should be communicated to *any one*."

This simple *omission* of Mr. Boott to *express a wish*, that his letter should be shown to those whom it concerned, was,

afterwards, magnified by Mr. Lowell, with the progress of the pressure for its production, into ideas of special confidence and a "sacred trust," [Mr. Lowell's affidavit, B. App. p. 64.] coupled with an assurance, given to Mr. Dexter, "that *it related to family matters, which had been closed, and ought not to be reopened.*" [Ante, p. 724.] The "Reply" goes the further length of declaring, now, for the first time, "that the letter contained matter of a *strictly confidential character, not relating in any way to these disputes*, which I [Mr. Lowell] did not feel at liberty to disclose."

If that were so, why did not Mr. Lowell, at first, say so, instead of saying "that it related to *family matters*, which had been closed, and *ought not to be reopened?*" And, if the latter was the ground of the refusal, what had "*he* to do, I desire to know, with these "*family matters?*" What right had *he* to judge, *against members of the family, and to preclude them from the opportunity of judging for themselves*, whether these "*family matters*" were *closed* or not, and whether they *ought* to be reopened or not? We might give the greater credit to the sincerity of Mr. Lowell's judgment,—notwithstanding the exceeding arrogance and impertinence of assuming to judge for others in matters of this nature, with which, he says, he had no concern,—if it did not appear that he had disclosed more or less of the contents of the letter to persons *out of the family*, and persons not particularly entitled to participate in that "*sacred trust*;" since Mr. Boott, certainly, had not "*expressed a wish*, that it should be communicated" to *them*.

Mr. Lowell will, perhaps, say that he has never "*communicated to any one, those parts* of the letter, in which the *sacredness* of the trust particularly lay,—certainly not the matter, which was "*of a strictly confidential character, not relating in any way to these disputes.*" But, why could he not have disclosed to *me*,—a party concerned,—as much as he did to others, who were not concerned? And why could he not have allowed me to see those parts of the letter, at least, which *did relate "to these disputes,"* and to

"family matters," particularly implicating myself? Why did he not state, explicitly, if such were the fact, that there was a portion of the letter, "strictly confidential," and "not relating in any way to these disputes," which he did "not feel at liberty to disclose;" but that "the greater part" of the letter,—all I could care to see,—did not lie subject to that objection; and that, reserving the confidential portion, a sight, or a copy, of the residue would be quite at my service?

But no,—there was another reason, it seems,—*not given to me*,—but which is assigned in the "Reply" as his *foremost* motive. He really hoped, that, by refusing to show me the letter, "the differences, existing in the family, would soon die out for lack of aliment; and there were passages in this letter *tending to irritate the parties*, and which, *for that reason*, I was desirous to withhold!"

Now I invite the reader to review Mr. Lowell's course, in this whole business, and to consider how singularly happy he was in his choice of means, if the amiable purpose were to heal a family dissension.

Just look at the course taken. Mr. Lowell, first, reads parts (as I shall prove,) of this letter to *several persons*, who had no concern in it. He speaks, again, of the letter, before the jury of inquest, as a mysterious production, *containing charges*, which its sane writer was not there to substantiate; and he connects this with suggestions of *ill treatment of the deceased*, by certain hard-hearted relatives, which led to his death. He, next, *repeats a portion of the charges to myself, and to Mr. William Boott, and, more at large, to Mrs. Mary Lyman*,—all alleged conspirators against the late Mr. Boott,—all considered by Mr. Lowell to be in a state of high exasperation,—and all persons, *against whom the charges of the letter are supposed to be particularly pointed*. We, (the conspirators,) are told, that this document contains Mr. Boott's "review of the *family quarrels*, from the beginning," and that "it dwelt upon *his grievances* very much." I am informed, that it accuses me of *dishonesty*. Mrs. Lyman is informed, that she is said to have acted the base part of a

spy in her brother's house ; and we are both informed, that I am declared to have acted the baser part of *procuring* Mrs. Lyman to serve *me* in that capacity, and of *placing her in Mr. Boott's house for the very purpose !*

The next step is, that I request permission to see, for myself, whether such charges are really contained in the letter, and in what manner, and connexion, they are made. But this I am refused, for no better reason, stated to me, than that Mr. Boott had not *expressed a wish* that these matters should be communicated to *any one* ;—that is, the very matters, which Mr. Lowell had, nevertheless, *just told* to the persons implicated, and probably to other persons also. I repeat my request, through a friend, and am then told, by Mr. Lowell,—who is entirely disconnected from the family,—that *he* does not think it right to let me see this letter, *because* it relates to *family* matters, which *he* judges, had been closed, and which *he* judges, *ought* not to be reopened. What is the forewarned consequence ? I am driven to oppose the probate of Mr. Boott's will, as the only means of getting at the letter, and proving that its writer was under insane influences. What happens then ? The gentleman, who refuses me a sight of the letter, constantly avers, and finally *swears*, that the person, who made these accusations, was,—notwithstanding all appearances to the contrary,—perfectly clear and sound in all his perceptions and ideas, when he made them, and that the letter, itself, “*evinces no aberration of mind,*” but, on the contrary, “*strongly tends to prove* that the said John W. Boott was *sane*, when the same was written.”

At last, I discover what this gentleman is said to have declared to the jury of inquest ; and I then call upon him, to know whether my information is correct, assuring him that, if it is, there must have been some mistake in his statements, prejudicial to me, which I wish to correct. What does he then ? Why he positively refuses *even to inform me what his testimony was* ; still more to admit the *possibility of any mistake*, on his part, or to afford me the slightest chance, so far as depends upon him, of *correcting* the mistake, if I could show one. What follows then ? I am thereby driven, since I

have no other remedy, to vindicate myself from unfounded aspersions by a guarded statement in print, for the information of my friends. And, thereupon, Mr. Lowell comes out with *such a publication as I now answer*; spreads it most extensively; and compels me, in self-defence, to disclose, and prove, many painful matters of family concern, which, in my former pamphlet, I had laboured, I thought successfully, to keep out of sight, for the sake both of the dead and of the living.

Could any thing have been more cunningly devised to *hush up* all causes of trouble in the Boott family, if *that* were the object, and put a stop to all further talk about "these disgraceful feuds?"

What, especially, could have been better contrived to *allay irritated feelings*, and dispel that "*exasperation*" against the deceased, which Mr. Lowell professes to have discovered in certain members of the family, (who, he asserts, did not, as they pretended, honestly believe in Mr. Boott's insanity,) than to communicate, verbally, just so much as was communicated, and no more, of the contents of the letter to *the exasperated parties themselves*, refusing them, at the same time, permission to *see* it, and assuring them that *its statements are strong evidence of sanity?*

Can it be, that so wary and intelligent a person, as Mr. John A. Lowell, should really have acted thus, from the motive he alleges? and that he should have done so purely for the sake of other persons, without any interest of his own?

Did he not, let me ask, rather flatter himself, that the contents of such a letter, "written at so solemn a moment," if cautiously whispered about, would tend, with very many persons, to account for the suicide, in a way to quiet all notions of insanity? Did he not expect, that a knowledge, by the persons implicated, that he possessed such a letter, would tend to awe them into silence on that topic, from fear of disagreeable consequences to themselves, which the publicity of the letter might occasion? And was it not with a view to that species of intimidation, that he voluntarily stated so

much of its contents as he did state to Mrs. Mary Lyman, from whom, he well knew, they would naturally reach me? Is not this view strengthened by the course he took afterwards? For,—when he saw, that, instead of being alarmed, I was disposed, after full reflection, to push the matter to an issue by urgently insisting upon a sight of the letter,—he then, instead of representing its statements, as he had represented them at first, to be of a very serious character, endeavoured to repress my urgency by assurances “that *nobody had seen the letter but himself*; and that *he* did not attach the *least importance* to what was said concerning me.”

However the reader may answer these questions to his own mind, I have no doubt that Mr. Lowell did hope, and confidently expect, that, by withholding from me, as far as possible, all information and knowledge of the wrong he had secretly done me, and making it difficult, he perhaps thought impossible, for me to bring to light those matters, which were essential for my vindication, while the principal evidence of them was locked up in his own keeping, I should, finally, be obliged to succumb, and leave him master of the field, with every thing settled his own way, and shut up against further inquiry.

Counting upon his position, and influence, and the prejudice he had created, he flattered himself that public opinion, and a large part of the Boott family, were so firmly secured on his side, that I could not stand up against the combination of forces, which, without making himself visibly active, he had concentrated against me; and, in which movement, he thought his own dexterity could not be tracked. It has required, certainly, some patience and perseverance to unravel his web. So far as I have now gone, I trust the work has been effectually done; and, when the remaining evidence shall have been shown to the reader, my belief is, that the true cause, which has aggravated so immeasurably the unhappy condition of the Boott family, will stand exposed in the person of Mr. John A. Lowell.

A friend, who knew, at the time, something of the course of affairs relative to the settlement of accounts, and something of my dissatisfaction with Mr. Lowell, even before I had arrived at the point of utter distrust, remarked to me, when I first saw him after Mr. Boott's suicide, which he considered as settling, of course, the long agitated question of insanity,—“That's a bad job for John A. Lowell.” If it should prove so, I pray the reader to remember, that it will only be because he has chosen, in the hope of sheltering himself at any hazard, to persist in attempting to make it “a bad job” for *me*. A very little yielding at the outset, accompanied by a little more frankness on his part, would, probably, have prevented all the ill consequences, to himself, which may grow out of this controversy. On my own account, I ought not, perhaps, to regret the course he chose to take, after I first called upon him for a sight of Mr. Boott's letter ; since I am now entirely sensible, that,—had he given me, at once, on Mr. Dexter's suggestion, such a paper as I should then have been willing to receive in lieu of seeing the letter, and had he dealt fairly by me, concerning his communication of the contents of that letter to other persons,—it would have been impossible for me to escape the consequences of prejudicial opinions, which, I now plainly see, took their origin, mainly, and derived their strength, wholly, from him.

To return then to the comments of the “Reply.” In considering them, the reader will not forget, that, within twenty-four hours after the inquest, Mr. Lowell, to quiet my request for a sight of the letter, assured me, that *nobody* had *seen* it, but himself. This appears, not only by the statement of my former pamphlet, which stands uncontradicted, but by the language of my contemporaneous letter to Mr. Lowell, of March 9, 1845, repeating his then recent assurance. “As this letter [Mr. Boott's] is known to be in existence, *although you have assured me that no one has seen it but yourself*, it would afford me satisfaction, in the peculiar circumstances of the case, to be allowed to peruse it.” His answer did not

deny, or question this statement. [Ante. p. 724.] Again, the "Reply" admits, that, when Mr. Dexter repeated the request in my behalf, Mr. Lowell repeated to him that he "had *not shown*, and did not intend to show, to *any one*, the letter written to him by Mr. Boott on the evening before his death." [L. p. 166.] And, once more, the "Reply," speaking to its readers, declares that "the letter had *never been read to any one.*" [L. p. 167.]

The averment, therefore, was, and is, perfectly distinct and unqualified, that the letter had neither been *shown* nor *read* to a single person. Yet, it appears, distinctly, that it had been *either shown, or read*,—parts of it, at least,—to the coroner, at his office, when Mr. Lowell called on him about holding an inquest; that it was, afterwards, produced at the inquest, and a portion of it, there, *either read, or repeated*, to the jury; and I shall presently prove, that portions of it, and, I believe, those most offensive towards me, had, also, been *read to other persons*, who stood in no such official relation, and had not the right, which members of the family had, to know what concerned the family alone.

First, however, let me point out what the "Reply" asserts, respecting the interview with Mr. Dexter:—

"Within two days of Mr. Boott's death, which occurred in March, 1845, Mr. Franklin Dexter had *announced to me*, that he had been *retained as counsel for Mr. Brooks and Mr. William Boott*, and that *his clients were determined to have an inquiry into the question of Mr. Wright Boott's sanity*. No idea of disputing the probate of his will was then entertained; and it was obvious to me, that the inquiry spoken of by Mr. Dexter could not fail, ultimately, to assume the form of a written or printed vindication of Mr. Brooks's conduct in his relations with Mr. Boott. Nor do I now believe, that any other form of inquiry was seriously contemplated." [L. p. 2-3.]

The further account is as follows:—

"In my interview with Mr. Franklin Dexter, on the Sunday preceding Mr. Boott's funeral, *he stated to me the determination of his clients to have an inquiry instituted* into the question of Mr. Boott's sanity. *I replied* that I did not see how that could be done unless *ex parte*, or unless it were by disputing the probate of Mr. Boott's will, of which I was the executor. When, soon afterward, Mr. Dexter

proposed that I should write to Mr. Brooks, stating that I had not shown, and would not show, the letter, and that it had produced no effect upon my own mind, I answered, that, if I were assured it was not the design of Mr. Brooks and Mr. William Boott to place me in an antagonistical position to them, by disputing the probate of a will, which it would be my duty to defend, I would willingly give to Mr. Brooks the assurance proposed; otherwise I must decline. Mr. Dexter replied, that *in this he thought me quite right*, but that he had no idea that *his clients* entertained any such intention." [L. p. 159.]

The object of these statements seems to be to corroborate the idea, held up in the "Reply," that there was an uncalled for hostility of movement on my part, and a combined movement, between me and Mr. William Boott, growing out of our alleged conspiracy with Mrs. Lyman and Mr. Robert C. Hooper, against Mr. J. Wright Boott, and out of the feelings of animosity towards him, imputed to each of us, as existing in his life time, following him into his grave, and seeking vent in some excuse for a publication to defame his memory. This is one of the cold-blooded slanders, which Mr. Lowell, presuming upon his position, has ventured to publish of persons holding a fair standing in society, in the hope to save himself, by making those, whom he has injured, odious.

In aid of that view, the "Reply" insists on representing Mr. Dexter as having acted, in the only interview he had with Mr. Lowell, in the avowed capacity of *counsel*, and as *counsel for both Mr. William Boott and myself*, and as beginning the interview by *announcing the determination of "his clients" to institute an inquiry into Mr. Boott's sanity*; to which Mr. Lowell represents himself as replying in the manner above shown; and represents Mr. Dexter as declaring that he thought Mr. Lowell "quite right," in declining to write me such a letter as Mr. Dexter had proposed, without a previous assurance that neither I, nor Mr. William Boott, would oppose the probate of Mr. J. Wright Boott's will. And the idea of opposing the will is represented as suggested by Mr. Dexter's first annunciation.

Now this account of the interview I pronounce to be essentially false; and I shall leave it to the reader to judge whether Mr. Lowell did not know it to be so,

In the first place, the reader will perceive, that it does not conform to the previous contemporaneous account, so far as that account went, of the same interview, contained in Mr. Dexter's letter, to Mr. Lowell himself, of March 11, 1845, above cited. But, on seeing the statements, above quoted from the "Reply," on points not distinctly spoken of in that letter of Mr. Dexter, and on seeing, also, its statement, elsewhere, about Mr. J. Wright Boott's *unwillingness to accept the balance* of the account, instead of his *refusal to adopt the account*, I addressed inquiries to Mr. Dexter, on those points, to which I received the following answer:—

LETTER FROM FRANKLIN DEXTER TO EDWARD BROOKS.

BEVERLY, MARCH 15, 1848.

DEAR SIR:

I have received your note of the 9th inst., inquiring of me whether certain statements, made by Mr. Lowell in his pamphlet, agree with my recollections.

My recollection of those matters is very distinct, and is as follows:—

I never had but one interview with Mr. Lowell, respecting the matters in question, and that was on Sunday afternoon, next after Mr. J. W. Boott's death. (March 9th, 1845.) On the morning of that day, you applied to me to call on Mr. Lowell on your behalf, and repeat your request to see Mr. J. W. Boott's letter. I consented to do so. You requested me to consider myself as your counsel in so doing. This I declined; but said I would go as your friend. I did so, and stated your request. Mr. Lowell's first remark to me was, that, if *I came as your counsel*, he could not converse with me, but must refer me to *his counsel*, Mr. C. G. Loring. I answered that *I was not your counsel*, and we had a long conversation. I had not then seen, or had any communication from, or on behalf of, Mr. William Boott, in relation to any of the matters spoken of in these pamphlets. Merely for the sake of distinctness, I add, that *I did not announce myself to Mr. Lowell as your counsel, or that of Mr. William Boott*, until my letter to him of March 11th, 1845, by the last clause of which it will appear, that I did not so consider myself, at the time of my interview with Mr. Lowell. That letter is printed in the appendix to your pamphlet, page 60.

When you called on me, on Sunday morning, you told me, that, if you were not allowed to see Mr. J. W. Boott's letter, you would, to protect yourself against the report of the imputations said to be contained in it, show that Mr. Boott was insane. *After Mr. Lowell had refused the request that you might see that letter, I told him that such would be your course, as a consequence of that refusal.* I in no other manner announced, at that interview, *your determination, and in no*

manner whatever that of Mr. William Boott, to dispute Mr. J. W. Boott's sanity. If Mr. Lowell refers to my letter of March 11th, 1845, for these communications, he is mistaken as to the *time*; and, as to the manner, my letter will speak for itself.

Mr. Lowell certainly stated to me, in that interview, that Mr. J. W. Boott, when the account, made up by Mr. Lowell, was first presented to him, said that he would never sign an account that brought his brothers and sisters in debt to him. *It was not, that he would not accept the balance, but that he would not sign the account,—and I so reported it to you.*

Yours, truly,

FRANKLIN DEXTER.

EDWARD BROOKS, Esq.

There are some other facts, connected with these statements of the "Reply," which deserve notice. While it was understood that Mr. Lowell's pamphlet was in preparation, Mr. Dexter informed me, that Mr. Lowell had, through a friend, exhibited to him the manuscript of that part of the "Reply," containing the account of the interview between them, for the purpose of ascertaining whether it agreed with Mr. Dexter's recollections. Mr. Dexter further informed me, that, finding the account erroneous, he had *so told Mr. Lowell's friend*, and had given him a *corrected statement*, in writing, to be communicated to Mr. Lowell, closing that statement with the remark, that he understood that Mr. Lowell had so communicated to him *all that he intended to publish*, relating to that interview; and that Mr. Lowell had made *no reply* to this communication.

After hearing this, I had no apprehension that, in relation to that interview, Mr. Lowell would publish any thing, to which he and Mr. Dexter were not agreed, nor any thing which had not been previously communicated to Mr. Dexter. I was surprised, therefore, on the appearance of the pamphlet, at seeing what its statements were; but more so, when Mr. Dexter informed me, soon after, that that portion of it (the same which I have above extracted from page 159,) appeared, notwithstanding his corrections, to be, word for word, as it was originally shown to him in manuscript; and that another part of the pamphlet (the same which I have above extracted from page 2,) contained other material, and highly incorrect, statements of what took place at that same inter-

view, which had never been communicated to him. There can be no mistake about this, because I have, now, in my possession, the original corrections of Mr. Lowell's statement, as they were dictated by Mr. Dexter to Mr. Lowell's friend, and, in the hand-writing of that friend, were left with him, to be communicated to Mr. Lowell. The paper was, afterwards, returned to Mr. Dexter, at his request, and has, since, been handed to me.

It is not for me to complain of the want of gentlemanlike courtesy, and even of common civility, towards Mr. Dexter, manifested by this entire neglect of corrections, furnished upon Mr. Lowell's own application, without even notifying to Mr. Dexter that he dissented from them; but I think I may be permitted to say, that Mr. Lowell's course, in this matter, pretty clearly indicates that the purpose of his application to Mr. Dexter "was not *to elicit the truth,*" [L. p. 3.] but to *secure beforehand*, if possible, a *confirmation* by him of a statement, the truth of which Mr. Lowell himself at least *doubted about*, but which he was *determined to publish* at any rate, because it best suited the view of the case, which he intended to hold out to the public.

His publishing a further statement, which he had not exhibited to Mr. Dexter, relating to the same conversation, was neither more nor less than a breach of what every gentleman would, under like circumstances, consider as a clearly implied promise. But what a trifle is that, compared with the effect intended to be produced by the "*Reply!*"

This last-mentioned statement [L. p. 2.] contains, among other things, the distinct assertion that Mr. Dexter, in that interview, *announced himself as my counsel, and the counsel of Mr. William Boott*; an assertion, which Mr. Dexter's letter to me, above printed, shows that he would instantly have contradicted. Did not Mr. Lowell know that he would contradict it? It is at least clear, that the assertion is not true. It is true, that, on requesting Mr. Dexter to enter upon a troublesome office, for my benefit, I was willing and desirous to place it on the footing of professional employment. But Mr. Dexter, considering the nature of the service, which

was rather an affair of honour and courtesy between gentlemen, than a matter of law, positively declined going to Mr. Lowell otherwise than as a friend, and presented himself distinctly in that capacity, as now appears, to Mr. Lowell. It was Mr. Lowell himself, who brought *counsel* into the case, by referring Mr. Dexter to Mr. Loring, *as the counsel of Mr. Lowell*; and it was not until two days after that interview of March 9, that Mr. Dexter, finding that no friendly arrangement could be made, first consented, in consequence of that reference by Mr. Lowell to *his* counsel, to act, thenceforward, as *my* counsel.

Mr. Dexter not only went to Mr. Lowell, at the outset, as a friend, merely, but he went *for me alone*, and so represented himself to Mr. Lowell. Mr. Dexter had not seen Mr. William Boott, as he states. I had not undertaken to speak for that gentleman. He had never requested me to act for him in this matter. I was looking at it, solely, as my own personal affair.

The statement, that Mr. Dexter *began by announcing an intention of Mr. William Boott and myself to oppose the probate of Mr. J. Wright Boott's will*, if the letter were not shown to us, is just as untrue as the statement that he announced himself as our *counsel*. There had not only been no concert, or consultation even, on that point, between me and Mr. William Boott, but the idea of opposing the probate of Mr. J. Wright Boott's will had never entered my head, nor I believe that of Mr. William Boott. It was first suggested by the remark of Mr. Lowell, as reported to me by Mr. Dexter, and by me to Mr. William Boott. The only idea, I had entertained, before that suggestion, of a means of showing the insanity of Mr. Boott, in answer to the imputations of his letter, was by causing the coroner's jury to be resummoned, for the special purpose of hearing evidence on that point, in order that their verdict might be amended in this particular. What other step I might have been driven to take, had that measure been found impracticable, is more than I can say; but, as I formerly remarked, the plan of a limited publication was first determined upon when I saw the turn which my correspond-

ence with Mr. Lowell had taken, in December, 1846, and when I was advised that there was no other form of remedy left for me. But,—however Mr. Lowell may have misinterpreted Mr. Dexter's remark, that a refusal to show me the letter would lead me to show that Mr. Boott was insane,—it is clear, from Mr. Dexter's report of the interview, that the remark was made in *reply* to Mr. Lowell, in order to make him sensible of the *probable consequence of his refusal*, and not by way of minatory announcement, to begin with, in the capacity of *counsel*, as the “Reply” pretends.

In the true spirit of friendliness, Mr. Dexter, when he found Mr. Lowell determined not to show the letter, proposed, as an accommodation between me and Mr. Lowell, that Mr. Lowell should simply state to me, in writing, what he had himself stated, verbally, to Mr. Dexter, as part of his excuse for refusing it; namely, that he gave no weight to Mr. Boott's expressions concerning me, because they were such, only, (so he then said,) as one man is apt to use against another, with whom he has a difference; that the letter produced no effect on his own mind, and could not upon others, *as it had been, and would be, unseen, except by himself*; and that it contained no charge against me of dishonesty in *pecuniary* matters. But even such a writing as that,—so perfectly harmless to Mr. Lowell, if he were pursuing a fair and open course,—so useful as it might be to me, in contradicting unpleasant reports, and setting matters right between me and certain members of the family, whose opinions had been prepossessed by Mr. Lowell,—that gentleman could not bring himself to grant, unless he could make a good bargain by it! Mr. Dexter's language, in his above cited letter of September 14, 1845, is,—“This statement, however, Mr. Lowell said he would make, *only on condition*, that neither you, [Brooks] nor Mr. W. Boott, should *dispute the probate of Mr. J. W. Boott's will!*”

Could any thing be more unreasonable than such a condition?—particularly when extended to Mr. William Boott, for whom Mr. Dexter was not then acting, and who had made no request to see the letter, and whose name had not even been mentioned, so far as appears, in the conference?

The requisition was, that—not only I, the applicant for a courtesy, which almost amounted to a right between gentlemen, but—another gentleman also, who had asked nothing of Mr. Lowell, should consent to surrender our *pecuniary interests*, as heirs at law of the late Mr. J. Wright Boott, and tacitly confirm a will, which gave the property to others, (part of it to Mr. Lowell,) and that, by suffering the will to pass unquestioned, we should *impliedly admit*, that its author, and the author of a letter imputing disgraceful conduct to me, and probably to Mr. William Boott, was, as Mr. Lowell asserted him to be, a *perfectly sane man* when he made these charges,—though this was contrary to our known belief, long maintained against much opposition. The admission, indeed, might have a material bearing on the past settlement of accounts, and on all the questions in the late controversy concerning that settlement, so interesting to Mr. Lowell. And what was to be the consideration for so important a concession? The granting of the courtesy sought? Not at all;—but the very much smaller one of a writing from Mr. Lowell, to the effect that all Mr. Boott had said, in the letter, did not alter *his* opinion of *me*!

Still, had my information of Mr. Lowell's proceedings continued, when this proposal came to my ears, with time for an answer, just what it was when Mr. Dexter suggested it, I should, for the sake of doing what I could towards healing the family dissension, have readily agreed, with Mr. Dexter's approbation, (for I had placed myself in his hands,) to the terms proposed. I should have accepted the very moderate *certificate of character*, which Mr. Lowell was willing to give on that condition, trusting that the weight of his good opinion with certain members of the family, and with many other friends, might serve to shield me, in some degree, from the consequences of evil rumours and misconstructions. My belief is, that Mr. William Boott would have agreed to it also; for neither he, nor I, had any wish, on our own account, and for our own benefit, (as our subsequent assignment to Mrs. Lyman proves,) to disturb Mr. J. Wright Boott's disposition of his

property ; and neither of us was, at that time, authorized to act for any other person in this matter.

But, before there was opportunity to consult Mr. William Boott, and to return an answer to this proposal, the very next thing I learn is, *that the coroner knows the whole drift of the letter*, and says he had *seen* it, and had *read the greater part of it*. Nor was I at all satisfied that this was not substantially true, by the circumstance that the coroner, when interrogated by Mr. Lowell and his counsel, in the presence of a third person, who was writing down his answers, (all which was without notice to me or my counsel,) took back, or qualified, what he had just said to Mr. Dexter, in a manner to excuse himself, in some degree, for so great an indiscretion, admitting, however, still, that the letter was *shown*, and *more or less of it read to him*, by Mr. Lowell.

Perceiving, thus, that the contents of the letter were already abroad among strangers,—to what extent I could not tell,—hearing the rumours prevailing, concerning the cause of Mr. Boott's suicide, and the existence of such a letter quoted in proof of it,—I determined to act on Mr. Lowell's suggestion, and to oppose the probate of the will, since it was then thought to be too late to reopen the inquest, and there was no other way of trying, judicially, the sanity of Mr. Boott.

Mr. Lowell makes great complaint of all this. He says that the notice of my change of course was an imputation that he had made false representations. Well, I must confess that I think it was. He adds, “*I was exceedingly astonished at such a charge, conscious as I was that the letter had never been read to any one!*” [L. p. 167.] Yet, he himself exhibits, in his “Reply,” the coroner's examination, as taken down at Mr. Loring's office, admitting,—not indeed that he had heard “the greater part” of “a very long letter,” but—that a “*very little was read to him.*” How much may have been in that little depends, entirely, (since we can not confide in Mr. Lowell,) on the degree of credit that may be given to the coroner's statement to Mr. Loring, contradicting his statement to Mr. Dexter,—which was, “*that he read the*

greater part of the letter, and was not restricted from reading the whole, and that, among other things, it contained a statement that the writer, Mr. J. W. Boott, was driven to the act of self-destruction by unjust accusations of mismanagement of his father's estate ;”—the very idea, which as it turns out, Mr. Lowell had communicated to the coroner's jury.

At any rate, the coroner's story, even as reported by Mr. Loring, was inconsistent with Mr. Lowell's unqualified assurance to me, and to Mr. Dexter, that *nobody, but himself, had ever seen the letter*.

The comment of the “ Reply ” is :—

“ One of these two things, therefore, must have occurred ; either Mr. Dexter must have misapprehended what the coroner had said to him, (and, though I should repose as much confidence in Mr. Dexter's exactness as in that of any one, this obviously may have been the case,) or else the coroner made two statements, within twenty-four hours, on the same point, diametrically at variance with each other. In either case, the imputation against me falls to the ground ; in the first case it is refuted ; in the second, one statement of the coroner neutralizes the other, and my own remains uncontradicted. It then became the bounden duty of Mr. Brooks and Mr. William Boott, as gentlemen and men of honor, *to tender to me an apology for having doubted my word*. They not only did not do this, but they proceeded, at once, to take the very course, with respect to the probate of Mr. Boott's will, which had been indicated by Mr. Dexter as a consequence of the discovery of my supposed misstatement. It is perfectly obvious, that they shut their ears to any justification of the course I had pursued ; and this could have arisen only from a necessity of having some ostensible antagonist, in assailing whom they might less invidiously attack the memory of Mr. Boott.” [L. p. 168.]

Now, in respect to the suggestion that the coroner's two statements neutralized each other, and therefore left Mr. Lowell's statement unimpaired, I have only to quote, anew, that gentleman's own admission, through his counsel, in a letter printed above. “ Mr. Lowell expressed the greatest surprise at these allegations, [of Mr. Dexter,] assuring me that the letter had never been *out of his hands* ; that he had *only read such portions of it*, to Mr. Pratt, as were *necessary to show that Mr. Boott had intended and inflicted his own death* ; and which he considered it *his duty to read to him for that purpose*.”

[*Ante*, pp. 726-7.] But the question is not of Mr. Lowell's duty to the coroner, but of the faith to be reposed in his assurances. When he assured me that *no one* had *seen* the letter, *but himself*, did he not mean that I should also understand that nobody had *heard it read*? Did he expect me to understand, only, that it had not been "*out of his hands?*" or that he had "*read only such portions of it as he thought it his "duty" to read*, in order to enlighten the coroner concerning the *cause* of Mr. Boott's death?

In respect to the suggestion of a probability that Mr. Dexter might have misapprehended the coroner, I have only to refer, once more, to Mr. Dexter's own language, while the matter was yet fresh in his recollection, in answer to Mr. Loring's suggestion to the same effect;—"I am *quite sure* that I reported the coroner correctly," &c. [*Ante*. p. 727.]

I should, certainly, have been very happy to apologize to Mr. Lowell for having doubted his word, had he succeeded in satisfying me that I had not very good reason to doubt it. If, for example, he had told me, in the outset, that nobody had seen the letter, or heard any part of it read, *except the coroner*; and that the coroner had not been informed of any part of its contents, *except* the declared intention of Mr. Boott to take his own life; and the coroner had not contradicted *that* statement; or had placed himself in a position to make contradictory statements from him clearly of no value; or if it had appeared probable that Mr. Dexter had misunderstood the coroner, absolutely and entirely, about the letter,—there might have been a case for me to apologize upon. I should have been very prompt to make such amends, had I appeared, either to myself, or to Mr. Dexter, to be under any sort of mistake. But, unfortunately for Mr. Lowell, such was not the case. Mr. Dexter was *very sure* of the *substantial effect* of what the coroner had said to him; and he was a gentleman, on whose punctilious exactness, in a delicate personal matter, I knew I could rely as much as upon that of any man living. That the coroner had contradicted himself, to some extent, was apparent enough, it is true. But what of that? Even his qualified statement to Mr. Loring admitted that he had

seen the letter, and had heard *part of it read*, and Mr. Lowell, through his counsel, had *admitted the same thing himself!*

This was quite the reverse of what I had been given to understand by Mr. Lowell ; and, unless Mr. Dexter were supposed to have *made up* the coroner's statement to him, there could not be a shadow of doubt, that the coroner either learned from the tenor of the parts of the letter, read to him by Mr. Lowell, that Mr. Boott was driven to suicide by unjust accusations, or else that he was so informed, by Mr. Lowell, of that supposed cause of Mr. Boott's death, in connexion with the parts of the letter read to him, as to lead him to infer that such was the *effect* of the letter. Now will Mr. Lowell be good enough to inform us *how* the coroner got such an idea, concerning either the tenor, or effect, as the . . . case may be, of that letter? How did he get the idea that Mr. Boott was *driven to suicide by false accusations?* Did he invent it? Certainly not. He got it either *from the letter*, or, in the same way that the jury got it, *from the statements of Mr. Lowell*, connected with the mysterious language of a letter, which, Mr. Lowell said to the jury, contained charges against somebody, of such a character that the letter ought not to be read, the writer not being there to substantiate them. He never seems to have thought of the better reason that the *parties accused* were not there, to be heard in their defence.

It is true that I did not know this at the time. But it was plain, from what I did know, that there had been false play, (although I had not then the least idea of its extent;) and it was plain that, upon the precise point of Mr. Lowell's having shown the letter, either Mr. Lowell had not told me the *literal truth*, or he had told me what was true *to the letter only*, and false in its effect. From that moment, I do not hesitate to say, my confidence in Mr. Lowell was utterly lost; and every successive discovery of fact, from that time to this, has only tended to satisfy me that I was right in the judgement I then formed, surprising as it may have been to many persons, before the appearance of my present proofs.

But one of the most curious facts in the case is, that Mr.

Lowell, himself, has now been compelled to publish conclusive evidence, that what he told me, about no one's having seen the letter, was both literally and substantially untrue. I refer, now, not to the coroner's statement, either to Mr. Dexter or to Mr. Loring; neither do I refer to the declarations of the *jurors*; but to the carefully written statement of Dr. James Jackson,—printed by Mr. Lowell for the express purpose of clearing himself from another suspected falsehood, of which the evidence then pressed strongly upon him. The statement of Dr. Jackson,—which, when once sought for and obtained, Mr. Lowell could not venture either to correct, or to misprint, or to suppress,—while it tends to exculpate Mr. Lowell from my suspicion that he had the letter in his pocket, during his conversation with me, (the point for which the statement was sought,) convicts him, positively, and beyond escape, on the other and more material point of his having unnecessarily communicated more or less of the contents of the letter. I quote, as follows, from Dr. Jackson:—

“My brother Patrick went into your house either just before or just after me. On my entrance you told me you had just got the letter; and you held in your hand a thick letter; you were crossing the room at the moment; you then sat down by the window and broke the seal of the letter. After looking through the letter hastily, you READ TO US SOME PARTS OF IT,—but not the whole, as I supposed and understood at the time.” [Ante, pp. 681-2.]

Now, why did not Mr. Lowell, when he told me, the very next morning, that *nobody had seen the letter, but himself*, frankly tell me the fact that he had read “some parts of it” to the coroner; that he had also read, or repeated, “some parts of it” to the jury; and that he had also read “some parts of it” to the two Messrs. Jackson? What parts of it, by the way, did he read to those gentlemen? Dr. Jackson does not inform us; and Mr. Lowell informs us only that “*the letter had never been read to any one!*” But we see what impressions the coroner got about the contents of the letter. We see what impressions the *jurors* got from Mr. Lowell about the alleged “false accusations” against Mr. Boott, connected with the fact of his suicide. I fear that the late Mr. P. T. Jackson, whose

good opinion was so desirable to all, who had the happiness to know him, may have gone to his grave with the belief, derived from what he heard of that letter and what Mr. Lowell otherwise told him, that I had acted a very wicked part in this whole affair, and that Mr. Boott was really the victim of a malignant persecution, and not of his own insanity. I fear that my friend, Dr. Jackson, may yet live in that belief, from the letter, and from statements made to him by Mr. Lowell. I have reason to apprehend that many of the numerous, respectable, and influential connexions of these gentlemen, and of Mr. Lowell, have adopted a like opinion, flowing ultimately from him; although they are all persons, like Dr. Jackson, too cautious, too kind, and too sensible of the nature of the charge, to *say* much on so painful a subject.

I believe that I am indebted to the author of the "Reply" for all this weight of sentiment against me, as well as for like opinions formed by certain members of the Boott family, who have pinned their faith upon Mr. Lowell as the great vindicator of *truth!* The public at large, nay, my own personal friends, were beginning to imagine that there must be something in it, for no other reason than because such opinions were entertained in such quarters, and, especially, because so very considerable a person as Mr. John Amory Lowell was every where quoted for authority.

Mr. Lowell! "Poor Wright's steadfast friend!" (So Dr. Boott calls him.) [L. p. 170.] The common friend of the whole Boott connexion! (So he describes himself.) Intimately acquainted with all the facts, and *especially with the accounts!* Perfectly disinterested! The best judge in the world of Mr. Boott's entire sanity! A gentleman, who, from his position and character, could have no conceivable motive, or desire, in this business, except to establish the fact, out of pure love for truth, that one much beloved friend, in the perfect possession of his faculties, had most deliberately killed himself, writing "with great calmness, as befitted the occasion," and that other friends, not less valued,—so "endeared" to him that he can scarcely yet shake off the "lingering tenderness,"—had wick-

edly conspired to harass an unfortunate relative to death by false accusations, and other ceaseless acts of cruelty and persecution! Was it not time for me to speak for myself, and show the realities of this case?

One of Mr. Lowell's comments on the doubting of his word, above complained of, seems, after all we have seen, to border on the ridiculous. He says, by way of introduction, that,—

“Mr. Brooks, by putting the correspondence of December, 1846, at the beginning of his book, produces the impression that this was our first intercourse upon the subject. Had he narrated events in their chronological order, it would have been apparent that he had, by his own course of conduct, forfeited all right to call upon me for an explanation.” [L. p. 174.]

Mr. Lowell's regard for “chronological order” we have already seen somewhat illustrated. We shall see some more striking exhibitions of the same valuable quality, when we come to scrutinize his array of evidence to prove a conspiracy.

The comment, however, which I intended to quote, is made in reference to my former remark, that “I hold him, not excused, as a gentleman, for refusing to inform me what his testimony was, when asked for the declared purpose of enabling me to correct erroneous impressions, produced by it, to my serious detriment.” [B. p. 162.] On that point he observes that,—

“Mr. Brooks forgets, that, nearly two years before, he had put himself in the position of having *doubted my word*, and, when the evidence, on which that doubt rested, had been, if not refuted, entirely neutralized, of having *offered no apology* for so insulting a doubt.

“There cannot be two opinions, among men of honor, as to his having forfeited the right of claiming any explanation from me.” [L. p. 174.]

How unfortunate that this should not have occurred to Mr. Lowell at the time of our correspondence! How much more dignified would it have been totally to decline answering on that lofty ground, about which “there can not be two opinions among men of honor,” instead of first undertaking, “frankly,” as he says, [B. p. 15.] to make the explanation,

and then shuffling and evading the pinch of the question, in the remarkable manner, which that correspondence shows, while he concludes by "*respectfully*" requesting to be *excused* from any *further* participation "in any of the issues growing out of these difficulties!" [B. p. 18.]

But let me not do Mr. Lowell the injustice to conceal his avowed motive here. He declares that,—

"A desire of preventing, if still possible, the *public disclosure* of these disgraceful feuds, and a *lingering tenderness* towards him, [viz. Edward Brooks,] alone prevented me from treating his application as it deserved!" [L. p. 174.]

This "*lingering tenderness*" I have mentioned so often, that every body must see how fully it is appreciated ;—and I am sure nobody can doubt the sincerity of Mr. Lowell's desire to prevent a public exposure. He appeals, however, to the court of honour ; and there I am perfectly content that he should take his trial.

CHAPTER LXVII.

AN OUTLINE OF MY ANSWER TO SUNDRY NEW CHARGES MADE BY MR. LOWELL.

I have done with the subject of accounts, and with the various collateral topics, connected with that subject by the allegations or suggestions of the "*Reply*." Several questions, concerning Mr. Lowell's personal conduct at, or soon after, the time of Mr. Boott's death, have also been disposed of, upon the idea that they were more properly connected with the settlement of the accounts, than with any other matter in controversy. Indeed, I have already covered the whole original ground of controversy, between me and Mr.

Lowell, with the exception of certain statements and evidence, contained in my former pamphlet, tending to justify my opinion that Mr. Boott was partially insane, as well as to show that I had reason to be greatly surprised at Mr. Lowell's remarks upon several occasions.

If Mr. Lowell had contented himself with merely answering that evidence, without converting his answer into an attack,—if he had only endeavoured to show, by other evidence, that my opinion of Mr. Boott's insanity was ill-founded,—this abstract question is of so little importance, in my view of the case, for the justification of my own conduct, that I might, perhaps, now consider myself sufficiently discharged of my obligation to expose the true character of the "Reply."

But, Mr. Lowell has been pleased to make his defence of Mr. Boott's sanity a pretext for assailing, further, the conduct and motives of myself and others in our family relations. The "Reply" has given birth to a new set of charges, having little or no connexion with the question, whether I had falsely accused Mr. Boott of mismanaging his father's estate. That idea, conveyed to the jury of inquest without my knowledge, and under the other circumstances stated, was the original calumny, which has been, heretofore, the main ground of our controversy. But Mr. Lowell has endeavoured, with some adroitness, to shift the issue. Quite another, and a wide, field of inquiry is now opened by the "Reply." The interior concerns and mutual relations of the Boott family, generally, are brought into the discussion, by charges of personal quarrels among them, attributed, entirely, to the scandalous ill conduct of certain members ; namely, Mrs. Brooks and myself, Mrs. Lyman, and Mr. William Boott, who are supposed to have co-operated in purposes of mischief,—Mr. Robert C. Hooper, though not a member of the family, occasionally lending his aid. We are accused, conjointly, of originating, fomenting, and keeping alive, the family dissensions, by our meddlesome and quarrelsome disposition, directed particularly against Mr. J. Wright Boott, without reason or provocation.

An answer to this sort of attack, manifestly, involves a general view of the conduct of Mr. J. Wright Boott towards others, and of others towards him, in matters distinct from his accounts and executorship. The question of Mr. Boott's soundness of mind, instead of the question of his good management of property, is, here, the connecting thread, which draws together many painful topics. They are of a kind, which I should gladly be excused from discussing ; especially as a satisfactory view of them requires the printing of private letters, not relating to business transactions, nor intended to be read, except by those to whom they were addressed, and which none of the family can desire to see in print.

Mr. Lowell, alone, would scarcely induce me to take a step so repugnant to my feelings. But, unfortunately, some o' my near connexions have been so blinded by his influences, as to place in his hands a large part of a confidential family correspondence,—thus furnishing him with delicate weapons, of which he has not scrupled to make a very bad use. In one or two instances, only, has he printed from this budget the whole of any one letter ; and never enough of consecutive correspondence to give a tolerably fair view of the surrounding circumstances, or of the feelings and motives of the writers. In general, he has selected single sentences only, or detached expressions, or very short passages, out of a large number of letters, and,—by arranging them, with entire disregard of "chronological order," so as to produce the most striking effect, in reference to the one-sided view, which he thinks it for his interest to present,—he has succeeded in producing impressions, not merely imperfect, but positively erroneous, respecting the actual state of facts before Mr. Boott's death ; and impressions highly disreputable to myself, and to several other persons. Certain members of the family have, inconsiderately, supplied him with the means to do this wrong. This is very unfortunate ; but it is not the whole of the misfortune. They and other members of the family, by their acquiescence in what he has done, permit themselves to be held out as giving their countenance, and approval, to representations of bad feeling, and unprovoked ill conduct, on

the part of brothers and sisters, towards a brother deceased, and towards brothers or sisters yet living, which, if these same members of the family were witnesses in the case, I am sure, the most of them would never support by their own statements,—nor am I ready to believe that any one of them would,—however their feelings may, formerly, have been enlisted against the idea of Mr. Boott's unfitness to be the family trustee. Mr. Lowell does not hesitate to make open boast of his support, by this larger portion of the family, as he represents, in a view of facts, which I must show to be essentially erroneous. His misrepresentations are, tacitly, allowed to stand for truths. The mere glimpses of a family correspondence, which he has exposed, seem, in a degree, to corroborate them. And readers of the "Reply" rely upon its statements, in this purely domestic part of the case, only because they are supposed to be upheld by the family; for these statements relate to matters, of which Mr. Lowell, obviously, can have little or no personal knowledge.

What then am I,—a party thus aggrieved,—to do? I have, it is true, no access to that part of the family correspondence, of which Mr. Lowell is the sacred depository. But I have, in my hands, original letters, written contemporaneously with the occurrences and occasions, of which they speak, by several of the very persons, who allow themselves to be published as the supporters of Mr. Lowell's views. These letters will, in some cases, show a directly opposite state of facts, to that which has been asserted, and in others will show sentiments, quite the reverse of those attributed to the writers by Mr. Lowell. What alternative is there, but to exhibit this evidence? I confess, at present, I see none. I move to such a task very reluctantly; but, if a part of the family, in real or apparent conjunction with Mr. Lowell, choose to make the discussion of such topics inevitable, I can only say that I shall choose to make it thorough, so far as may be needful to exonerate myself and Mrs. Brooks from the unfounded imputations, which have been, thus publicly, cast upon us.

It is a further subject of regret to me, that this will, obviously, require so large an addition to the many pages already

printed, that the whole can not be brought within the compass of a convenient volume. The number of my present page makes this perfectly apparent; and it leads me to depart, in one particular, from my original design. My intention was, to place no part of my answer to Mr. Lowell in the hands of my friends, until I was ready to show them the whole of it, in print. This, as it was entirely arranged and written, I hoped to have done, long ago, and in less space than I have already occupied. But I have found, by experience, much greater delay than I anticipated, incident to the carrying of such a book through the press, with its numerous references and quotations, as well as the many corrections, and sometimes additions, which suggested themselves during its progress. So much time has thus already elapsed, and some ardent persons have thought proper to express so much assurance that I could have nothing effective to show, in disparagement of Mr. Lowell's triumph, that I confess myself unwilling to retain the portion of my answer now printed, (a subject distinct and complete in itself,) for a period so much longer as, I now perceive, will be needful in printing, with due care, that which remains. I have concluded, therefore, to close this volume with a general view of the state of the controversy, as it now stands, leaving my comments on other parts of the "Reply" to be the subject of a supplementary communication, unless some unforeseen circumstance should, in my judgement, adequately relieve me from the necessity of another disagreeable step.

It seems, however, to be due to all parties, and no more than fair to Mr. Lowell, that some idea should be given, at this time, of the course I intend to take, and some brief outline of the principal points, which I am prepared to establish.

In my former pamphlet, I made a prominent point of Mr. Boott's insanity. I had, and have, a deep conviction of the fact. It was, in truth, one of my governing motives for insisting on a change of the trusteeship, in 1844. But, my attempt to satisfy my former readers of that apology for Mr. Boott is put, by Mr. Lowell, on much the same footing with my impeachment of his good management as a trustee. It

is treated as an indignity,—an outrage on the memory of the dead. He, who holds himself out as the fast friend of the deceased, makes every effort to disprove, what he affects to consider a cruel calumny, instead of an excuse ; so that it has become no less apparent to every reader of the “ Reply,” than it was to the jury of inquest, “ that Mr. Lowell was, extremely anxious to have Mr. Boott made out a sane man.” [Ante, p. 78.] Why, he best knows ; though others are at liberty to guess. The only reason assigned is regard for *truth* and his friend’s memory!

We are assured, also, that “ six out of the eight surviving members of Mr. Boott’s family did not believe in his insanity, and desired no verdict *contrary* to the truth ;” [L. p. 21.] and, of course, if Mr. Lowell is authorized, as he assumes, to represent their present opinions, they do not desire, now, that any one should be satisfied that Mr. Boott was afflicted with any kind, or degree, of mental derangement, being satisfied themselves that the *truth* is the other way. The only consequence of this is, that they, and Mr. Lowell, must account for Mr. Boott’s conduct, which I shall be obliged to prove, on such other theory as they please. My business will consist in disproving the only theory, which the “ Reply” has put forth.

To Mrs. Brooks, and myself, and Mr. William Boott, and, I presume, I may safely add Mrs. Lyman, according to my impression of her present views of the case, (and this constitutes about one half of the now surviving brothers and sisters,) it certainly would be a gratification to find others coinciding with us in opinion on the point of partial insanity. This portion of the family would gladly have seen, at the time of the inquest, and would gladly see, now, that charitable mantle,—so generally, and so broadly, thrown over the grave of the self-destroyer,—drawn, in this instance, over the errors and failings of one, who was once a much-loved brother, and who is described by Mr. Lowell as “ a gifted but unfortunate son.” [L. p. 23.] Three of us, at least, believed, and believe, that such a finding, by an intelligent jury, after careful examination of the facts, would have been the true and sure quietus of a most unhappy family

dissension. But if we, who are said to be actuated by nothing but feelings of resentment towards the deceased, stand alone in this desire,—if all the rest of the family, who are called to mourn his shocking end, together with their and his warm-hearted and disinterested friend, the intimate of thirty years,—at least in his business transactions,—think and desire otherwise, I know not why I should go much out of my way, in a personal controversy with this gentleman, to thwart his and their desires.

While certain statements, concerning me, attributed to Mr. Boott, derived an especial value and importance, in my judgment, from Mr. Lowell's endorsement of them, I thought myself particularly bound to show, that they originated in nothing but the insane delusions of their author. The facts, which I have since discovered, respecting Mr. Lowell's conduct, and especially the character of his "Reply," have relieved me, I am happy to say, from any undue solicitude on that score. The statements, alluded to, stand, now, in my estimation, and I think they will in that of every unprejudiced reader, with no additional weight derived from Mr. Lowell's adoption of them. They are, simply, Mr. Boott's expressions, thrown out in a certain frame of mind. As such, I have no difficulty in dealing with them upon the facts, which can be proved, whether he is reputed to have been sane or insane. I am, therefore, equally content to meet the case, made against me in the "Reply," upon either alternative. Reason enough has, I trust, been shown, to justify the effecting of Mr. Boott's resignation of the care of the family property, even admitting him to have been not less sane than Mr. Lowell; and, in respect to all the other charges, brought against myself or Mrs. Brooks in the "Reply," whether upon the authority of its author, or that of the late Mr. Boott, I do not intend that our personal vindication shall be left dependent, in any degree, upon the reader's belief in Mr. Boott's insanity.

I have spoken of that question as a connecting thread, which runs through the remaining topics. As such, I intend rather to treat it incidentally, in answering Mr. Lowell's comments, than as the main proposition, which I am bound to

establish. Referring to my former pamphlet for the general view, which I took of Mr. Boott's mental condition, and for a body of evidence in support of it, I shall, now, content myself with taking up, as my texts, certain prominent passages and ideas of the "Reply;" and, in refuting them, I shall expose, by the way, its feebleness and insufficiency, as an answer to the former evidence of that gentleman's insanity on certain subjects.

In the part of the case, which relates to personal conduct, Mr. Lowell will find that he does not possess the advantage of better means of knowledge than myself, as he did on the subject of the accounts. On the contrary, when he was bold enough to attempt to found an argument on private history, in the domestic circle of the Boott family,—with which, notwithstanding his business relations with Mr. J. Wright Boott, and latterly with Mrs. Boott, he held very little social intercourse,—it will appear that he ventured upon dangerous navigation, under very poor pilotage, or none at all. Here, at least, I am familiar with the passage; and can easily run his craft ashore at every tack. To use his own language, I shall make it "pretty evident that" Mr. Lowell "has undertaken to enlighten the public about transactions of which he never knew any thing, or which he has completely forgotten;" [L. p. 109.] the former being, in most cases, the probable truth.

It will appear, perhaps, that he and certain members of the family, contributed to mislead each other. He, certainly, misled them on some points, and may, to some extent, have been misled in turn on others. That is to say, the family, generally, relied, implicitly, upon Mr. Lowell's assurances that every thing, respecting the *accounts* and the management of the *property*, was substantially right. Believing this to be so, a small portion of the family in this country, (it was confined, originally, chiefly to a few ladies,) who were unwilling to admit that Mr. Boott was either insane, or otherwise incompetent to be the family trustee, or that he had misconducted himself in any other respect, suffered themselves to become unduly excited about the means taken to cause his resignation, and were wrought up into a state of very extravagant sentiment

and expression, respecting Mr. Boott and his supposed persecutors. Mr. Lowell found it for his interest, while the settlement of accounts was an open question, to adopt the views of these ladies, or at least to appear to them to adopt their views; and he did so, or pretended to do so, without either knowledge or inquiry, and without making the fact distinctly known to me. Members of the family, abroad, could judge of the true state of affairs here only by the representations, which reached them from home; and, among these representations, it will be found that Mr. Lowell's carried the day. He has contrived, thus far, to maintain, with that portion of the family, the ascendancy, which his *disinterested* position originally gave him. After the settlement of accounts, came the unexpected event of a suicide, which it was necessary to account for, without permitting the idea of insanity to prevail. Then followed the litigation respecting the probate of Mr. Boott's will, involving the question of his sanity; and, this having ended without a trial in the upper court, and being succeeded by my discovery of Mr. Lowell's testimony at the inquest, and by our unsatisfactory correspondence, and, consequently, by my former pamphlet, Mr. Lowell has, throughout, found himself in a position, which, as he thought, made it for his interest to maintain one side of a family controversy, originally espoused by him, solely in reference to the settlement of accounts. For the sake of maintaining that side, he has gone all lengths in his "Reply," without regard to its consequences to those for whom he professes so much attachment; and he has relied, for his supposed facts in the domestic history, upon loose and erroneous impressions, derived, more or less directly, from the most excited and least informed portions of the family; while a few scraps, carefully culled out of a family correspondence, ransacked with that view, seem to lend a degree of countenance and support to his theory.

The foregoing remarks will serve to suggest, to every intelligent reader, the general line of my defence against Mr. Lowell's latest attack; but I will now proceed to state a few

particulars, which I propose hereafter to substantiate, and make perfectly clear.

One object of the "Reply" being to convince its readers of Mr. Boott's sanity, and to create a prejudice against those who denied it, it is said,—

"Not a single human being, having opportunity of judging, and whose opinion was *unbiased by personal resentments*, has been adduced as believing in Mr. Boott's insanity." [L. p. 126]

I shall examine that position.

In the first place, I shall show, that many persons, against whom no suspicion of a personal resentment has ever been suggested, and who had fair opportunity to form an opinion, expressed their belief, on different occasions, that he was partially insane; among them nearly every member of the Boott family, other connexions or personal friends, and several gentlemen of medical experience, including Dr. Jackson, and Dr. Francis Boott. Mr. Lowell himself, at one time, admitted it. And, although Mr. J. Wright Boott led a life of such seclusion that few persons, latterly, saw him at all, I shall prove that several *strangers*, who happened, shortly before his death, to meet him on occasions when he was in a state of particular excitement, formed that opinion, from their own observation. The testimony, in the probate court, of a former postmaster of this city, as printed in my former pamphlet, is directly in point. But several other gentlemen, including Mr. Lowell, were present at the interview, to which he testified; and all,—unless Mr. Lowell be an exception,—formed the same opinion. I shall show that, on another occasion, a respectable physician, well known in this city, who had no acquaintance with the Boott family, and had never heard of any trouble or dissension in it, nor any thing about Mr. J. Wright Boott's state of mind, called to see him on business, not long before his death; and the result of their interview was, that this gentleman,—experienced as a medical man in such matters,—went home convinced, by his own observation of Mr. Boott's appearance, language, and demeanour, that he was insane; so much so, that

he expressed that opinion in his own family the same evening, and was reminded of it by them, some time after, when they heard of Mr. Boott's death, by suicide.

I shall compare, with the evidence above referred to, the statements of other gentlemen, not connected with the Boott family, who are relied upon by Mr. Lowell as positive witnesses of Mr. Boott's sanity,—they also having formed their opinions in brief interviews on subjects of business, not long before his death. On these occasions, it does not appear that Mr. Boott was under any particular excitement, and he impressed those gentlemen favourably, in all respects. They did not notice any mark of derangement. But, without the slightest disrespect for their judgements, I shall show, by the well established laws of partial insanity, that their negative testimony is absolutely of no value, to contradict the positive testimony above referred to, or to counterbalance opinions, formed by other persons from their own observation of Mr. Boott, at other times, and under different circumstances; since the gentlemen, cited by Mr. Lowell, expressly declare that Mr. Boott was, when they saw him, in a perfectly calm and unexcited state of mind, and it appears that they *took to be true* his averments of certain matters, which they knew nothing of, but which, I shall show, had no real foundation in fact. And, since he is admitted, on all hands, to have been a man of truth, I think the fair inference must be, that these unfounded notions can be reasonably accounted for only as the phantasies and delusions of a deranged mind.

The opinion of Messrs. Choate and B. R. Curtis, respecting the sanity of Mr. Boott's *last letter*, I shall show, stands in the same predicament, for the simple reason that those distinguished gentlemen were utterly ignorant of the *facts*, necessary to *test the foundation* of its statements. They had, literally, nothing to judge from, except that the letter, by itself, may have *made sense*,—which, as is well known, is in no degree inconsistent with the kind of insanity supposed. And, although I have not had the benefit of seeing that letter, I shall show from every other scrap of Mr. Boott's writing, or conversation, in the latter part of his life, which Mr. Lowell

has permitted us to see, that a certain set of fixed ideas runs through the whole of them, and that these ideas had no corresponding reality out of their author's brain.

In the next place, I shall examine the evidence, relied upon by Mr. Lowell, to destroy the credit of certain witnesses, whose long acquaintance, and daily intimacy of intercourse with Mr. Boott, during a period of marked progress in his mental disorder, gave them a far better opportunity, than any other competent witness enjoyed, of forming a correct judgment respecting his true state of mind. I refer, particularly, to Mr. Robert C. Hooper, and to Mr. William Boott, whose statements I formerly printed. The ground of the impeachment of the testimony of those gentlemen is alleged personal quarrels with Mr. J. Wright Boott, and feelings of resentment towards him in consequence. I shall show that there is scarcely a *colour* for the charge of any *personal quarrel* on the part of Mr. Hooper. Against Mr. William Boott, it is true that a stronger show of a case is made, by the particular version, given in the "Reply," of a scene, which ended in his being *struck* by Mr. J. Wright Boott, and out of a few "choice extracts" from his familiar letters to his brother, Dr. Boott.

In respect to the *scene*, above alluded to, an account is given of it, in the "Reply," purporting to have been derived at the time, by Mr. Lowell, from Mr. J. Wright Boott himself, in which his own personal violence was attributed to very provoking language used by Mr. William Boott. This account, I shall show, has the merit of entire novelty. It makes its first appearance now, under the pressure of the argument; and I shall further show, that it is directly contradicted by Mr. Lowell's previous accounts of the same matter, after he had heard Mr. J. Wright Boott's story. Those accounts entirely corroborated Mr. William Boott, and represented that *no* provocation was given.

As to the shreds of correspondence, cited to prove feelings of animosity, I shall show that, in respect to them, Mr. William Boott is most unfairly dealt with; and that, with a little more regard to "chronological order," and to the state

of facts existing at the time each letter was written, it becomes apparent, that the excitement of the writer had nothing to do with the personal ill treatment he had formerly suffered from Mr. J. Wright Boott, but was caused by particular, and more recent, provocations from *other persons*, who were pursuing a course well calculated to irritate any man, placed in such circumstances. The feelings of resentment, indicated by particular expressions, will be found to have been, generally, directed against these other persons, rather than against Mr. J. Wright Boott; and it will appear that, when Mr. William Boott was provoked by them to use a harsh phrase concerning that brother, it was under circumstances, which naturally account for it, and show that it can not be fairly taken as an indication of his usual state of feeling, nor be received as evidence to discredit his general fixed belief of his brother's partial insanity, constantly maintained by him, while others refused to admit it.

I shall show that the same course of remark applies to the warmth of expression attributed to me, on certain occasions. I shall exhibit a state of facts,—entirely shut out of sight by Mr. Lowell,—which could not but occasion a degree of warmth on my part, owing to the conduct, not of Mr. J. Wright Boott, but of persons whom no one suspected of insanity.

Another passage of the “Reply,” to be disposed of in the same connexion, is this :—

“The *kindest view* that could be taken of the conduct of those, with whom Mr. Boott was at variance, was, *that they had never practically believed him to be insane.*” [L. p. 21.]

Indeed, Mr. Lowell has the effrontery, (I can not call it less,) to assert, in direct terms, and without qualification, that “*Mr. and Mrs. Brooks did not think him insane;*” [L. p. 126.] and he asks, “Is it possible, that when *Mr. William Boott* penned these sentences, [referring to particular expressions, picked out of his letters to Dr. Boott,] *he believed, in his heart, that his brother was insane?*” [L. p. 134–5.]

I shall show, in answer to this, what the conduct was of

the several persons "with whom Mr. Boott was at variance," and what the circumstances leading to it were, which have been either wholly concealed, or entirely perverted, by Mr. Lowell. But, further, I am prepared to prove *Mr. Lowell's own distinct declaration*, before his interest required him to assert otherwise in the "Reply," that he "*had no doubt* that Mr. Edward Brooks and Mr. William Boott *did honestly believe* in Mr. J. Wright Boott's insanity."

I intend also to take up, as a valuable text, the following announcement of the "Reply":—

"I shall begin with Mr. and Mrs. Brooks, whose *quarrel* with him [Mr. J. W. Boott,] appears to have had the *earliest origin*." [L. pp. 111-112.]

In connexion with it, I shall take, for another text, the following language of Mr. J. Wright Boott, according to a letter from Mr. Darracott, printed in the "Reply." The letter was written, by Mr. Darracott, upon my request that he would furnish to Mr. Lowell the information it contains, respecting a remark made by Mr. Boott. Mr. Darracott complied with my request, although he said, (very truly I doubt not,) that he did not see what *bearing* it could have. Mr. Boott's language was this:—

"Ours was always a united and happy family, *until Brooks came into it.*" [L. p. 154.]

Under these heads, I shall be compelled to exhibit something of the character of my own intercourse with the various members of the Boott family, as illustrated by their own letters and by other evidence; and I shall, also, be compelled to show, by like means, the relations of the various members of the family to each other, at different periods. It will be found, that, for many years after I became connected with the family of Mrs. Boott, hers was well entitled to be called "a united and happy family," throughout its entire circle; and, for myself, *more than twenty years elapsed* before I had the slightest difference with any one of them. Indeed, until the unfortunate dissension arose respecting Mr. J. Wright Boott, within the two or three years next before his death, there was no

difference between any parties, in which either Mrs. Brooks or myself was implicated ; nor, in fact, was there any, known to me, which deserved the name of a quarrel, dissension, or disaffection, between any branches, or members, except such as occurred, for a series of years, between Mr. J. Wright Boott, alone, and some other one, or more, of the family. But, in respect to Mr. J. Wright Boott, it will appear, that a marked change in *his* demeanour, towards others, began at a time coinciding with the first pressure of his pecuniary embarrassments. Thenceforward, it is unfortunately true, that there arose a continuous succession of ruptures, between *him* and some one or other of his brothers, sisters, and brothers-in-law, embracing, at different times, nearly every one of them. These feuds occasionally extended, for a time, beyond the original parties,—others being drawn in to a greater or less degree,—but *Mr. and Mrs. Brooks never permitted themselves to be implicated, on either side*, until their own turn came to suffer, personally, from Mr. J. Wright Boott. In fact, there *never* was, I believe, what could fairly be called a quarrel in the family, to which Mr. J. Wright Boott was not *one party*, or which did not grow out of, or relate to, *his conduct*. The instances, of which I speak, were not such slight and temporary differences, as may often occur in a large family, without any extraordinary cause ; but breaches of the most serious kind, ending in an entire cessation of intercourse, between Mr. J. Wright Boott and some one or more of the family, which was always of long duration, and, in most instances, continued through life.

Such a breach occurred with the following parties, successively ; the late Mr. Lyman,—Mrs. Lyman,—Mr. Ralston,—Mrs. Ralston,—Mr. William Boott,—and, finally, Mr. Brooks and Mrs. Brooks. The late Mr. Kirk Boott, in his life time, can scarcely be excepted from this list, the breach with him being all but total. This state of facts I shall prove, in part, by original letters in my possession from several of the persons above named, and from other members of the family. Among them are several from Mr. Kirk Boott, written very shortly before his death, and which have never yet seen the light.

Near approaches to the same state of things were not wanting, between Mr. J. Wright Boott and *every other* brother and sister, in addition to Mr. Kirk Boott ; but I speak now only of those cases, which came to *positive rupture*, followed by *an entire cessation of intercourse for years* : and of these, I shall show that the "quarrel," as Mr. Lowell calls it, of Mr. and Mrs. Brooks,—instead of "the earliest,"—had the *latest* origin, and that it was, entirely, of Mr. Boott's own making.

I have said that, until the latter part of Mr. Boott's life, I had no difference with any one member of the family ; but I shall show, further, that I succeeded in preserving, through many trying circumstances, the most friendly relations towards Mr. J. Wright Boott ; that I was constantly called upon by him, as well as by other members of the family, for gratuitous services, which were cheerfully rendered ; and that, on more than one occasion of serious difficulty, between him and some other one or more of the family, I was required, by the choice of both parties, to act as the common mediator ; and that I did so, with more or less of success, taking much pains, at least, to preserve, or restore, the family harmony.

In every case of rupture, the breach will be found to have *originated* in strange and perverse conduct on the part of Mr. J. Wright Boott ; and there will appear a sort of uniformity, running through all these cases, and arising from nothing but his peculiarities,—by whatever *name* they may be called. The beginning was, invariably, some *unfounded suspicion* entertained by Mr. Boott ; the progress was always marked by unexplained coldness of manner on his part, proceeding to manifest signs of aversion,—increasing rudeness,—positive insult without provocation,—charges, quite unfounded, and very similar to those said to be contained, against some of us, in his last letter,—and, at last, if an entire abstinence from intercourse with him did not sooner intervene, by some violent outbreak of gross offence ; and this was the more striking because of his usual great decorum, and urbanity of manners. The groundless suspicion, once entertained, could never, it would seem, be thoroughly eradicated. All this may be set down either to a most peculiar, moody, and ungovernable,

temper, or to a species of partial insanity, just as the reader pleases,—at least, so far as *I* am concerned. Until quite late in his life, it is true that the latter explanation of his strange conduct was not suggested, if suspected, by those who suffered from its paroxysms; but, it will appear, that scarcely any one of the family was wholly exempt from suffering by them; and that this explanation of his conduct came, at last, to be very generally received.

I shall show when, and how, this course of offensive conduct first began to manifest itself towards me, and, afterwards, towards Mrs. Brooks; and I shall show to what point it was allowed to proceed, before it was arrested by the consequent interruption of intercourse. I shall show, further, that, at the time when intercourse ceased between us, the Wells branch of the family took a view of family affairs, connected with Mr. J. Wright Boott's conduct, which was taken by *no other one* of the family; that his marks of decided aversion, were at that time, extended to *every other* brother, sister, or brother-in-law, on this side of the Atlantic; and that, from the other side, Dr. Boott, who is now claimed by Mr. Lowell as one of his warmest adherents, expressed himself, as strongly as any body, in reprobation of Mr. J. Wright Boott's conduct, (of which he himself cited instances,) towards brothers and sisters, both dead and living, and in reprobation, also, of the laudatory letters from some of the Wells family concerning him. Now, since most of the persons, above spoken of, are justly described by Mr. Lowell as very amiable and excellent people, (though two or three of us, who happen to stand in his way, are thought to be striking exceptions,) I shall leave the reader to draw his own conclusion from the fact, that Mr. J. Wright Boott was, for years, at utter variance and enmity with nearly every one of them.

These sentiments of Dr. Boott, respecting the merits of Mr. J. Wright Boott's conduct in the family, (I speak of *merits*, supposing him *sane*,) will be found to have remained unaltered, and in full force, even *after* his opinion of his brother's *insanity* had been staggered by Mr. Lowell's representations, supported by a certain letter from Dr. Jackson, to which

I shall again refer, as well as before that opinion was formed. Indeed, the long settled opinions of Dr. Boott concerning the *causes of dissension* in the family, strongly and clearly expressed in his letters, will be found,—like his opinion on the point of insanity,—to have yielded at last, so far as they have yielded, to nothing but his overweening confidence in Mr. Lowell's good judgement, amiable feelings, strict regard for truth, and perfect disinterestedness! This will be found equally true of Mrs. Boott, so far as a change in her sentiments appears by Dr. Boott's letters, from some of which, extracts, bearing on this point, were printed in my former pamphlet. [B. pp. 140-1.]

In respect to Dr. Boott's former opinion of his brother's *insanity*, the statement of the "Reply" is, that it was founded "on *ex parte* statements from *Mr. Brooks*, *Mr. William Boott*, and *Mr. Robert C. Hooper*." [L. pp. 126-7.] So far as concerns "Mr. Brooks," this will be found to be totally untrue. I never made a statement, by word or letter, to Dr. Boott on the subject in my life.* Neither, I believe, did Mr. Hooper. The allegation, that any such statements were made by either of the persons named, can be true only of Mr. William Boott. He was the habitual family correspondent of his brother, Dr. Boott, and, of course, communicated intelligence, from time to time, of all interesting occurrences in the family. He, at one time, transmitted to his brother an original letter of Mr. J. Wright Boott to Mr. Hooper, which he had obtained from that gentleman, and which Dr. Boott pronounced to be stamped with insanity upon its face. The reader, on seeing it, could not fail to agree with him. But Dr. Boott formed his opinion, not from that letter alone, but from many facts, derived from other sources, as well as from Mr. William Boott. Some of them were from parties, whom Mr. Lowell supposes to be, (or so pretends,) on his side of the question; and some of them reached Dr. Boott from so very unexcep-

* Since the above was in type I have discovered an obscure *erratum* in the "Reply," from which it appears that this was intended for *Mrs. Brooks*. The reader will see presently, how far the statement is true in respect to her.

tionable a source as Mr. J. Wright Boott himself;—all which will, in due time, appear by Dr. Boott's own letters.

In regard to Dr. Boott's *change* of opinion, if it be really changed, on the point of his brother's insanity, this will be found to have been derived entirely, *from Mr. Lowell*, supported by the supposed opinion of Dr. Jackson; and Dr. Jackson's opinion will be found to rest upon nothing but a statement of assumed facts, made to him *by Mr. Lowell*, without knowledge or inquiry, and made at the moment when Mr. Lowell *first learned my refusal to sign the deed of the house*, if Mr. Boott was to be the trustee of the proceeds; that is, at the moment when he first perceived the necessity of a resignation by Mr. Boott, and, consequently, of a *settlement of accounts implicating himself*.

This coincidence I shall put beyond doubt by entries in the books of Mr. Nathaniel I. Bowditch, (to whom I signified my refusal, and who signified it to his clients,) connected with Dr. Jackson's letter to Mr. Lowell, and Mr. Lowell's letters to Dr. Boott. Up to that time, Mr. Lowell's representations of the facts of the case will be found to have been such as to induce Dr. Jackson to confirm the idea of a partial insanity, then generally believed by the family; but, when Mr. Lowell found that I had taken a stand, in a matter of business, opposed to him, and one which must, necessarily, lead to a settlement of the executor's accounts, he instantly turned round, and, without any communication with me, or with Mr. William Boott, represented to Dr. Jackson that we were in a state of great exasperation against Mr. J. Wright Boott,—that the whole affair was nothing but an ordinary quarrel,—and that Mr. J. Wright Boott's conduct towards his relations appeared to be founded upon very reasonable provocation;—and, thereupon, he obtained a letter from Dr. Jackson, expressing the opinion, that, “*on the statement you last made to me, I should judge that there was not any evidence of monomania in Mr. Boott's case.*” [L. p. 163.] This was transmitted to Dr. Boott, with the letters from Mr. Lowell himself, which the reader has already seen; [Ante, pp. 699 to 701.] and these have, probably, been followed by many, which he has not

seen ; and Dr. Boott and Mrs. Boott have placed absolute confidence, in these letters.

In respect to my own breach with Mr. J. Wright Boott, before I had come to the conclusion that his singular conduct proceeded from actual insanity, and was not under his own control, it will be shown that it did not originate at the time, nor in the manner, nor from any of the causes, set forth in the "Reply." It will appear, particularly, that my letter to him of September 22, 1842, was (considering him a sane man,) no more than a justifiable consequence of his own acts, and that it was not the *cause* of our breach, but that the breach had occurred long before. Neither was it caused by any letter, act, or word, of Mrs. Brooks.

Another idea, prominently held out in the "Reply," is, that Mrs. Brooks, (at my instigation, of course,) was in the habit of communicating, by letter, to her mother and brothers in London, every petty occurrence, here, that could be turned into a subject of complaint against Mr. J. Wright Boott. The purpose is supposed to have been to forestall opinions, and create prejudices, with the view of preparing, or inducing, Mrs. Boott and Dr. Boott to co-operate with us against Mr. J. Wright Boott. This underhand dealing is represented to have been a principal cause of the family dissensions, and a justification of certain conduct of Mr. J. Wright Boott towards us. [L. pp. 112, 115.]

I shall take up the evidence, on which these suggestions are founded, and shall show, among other things, that, in maintaining that view, Mr. Lowell has had the misfortune, as I have good reason to believe, to *misprint, by one whole year, the date of a material letter*,—the false date being quite important to the course of his argument. I refer to a letter from Mrs. Brooks to Dr. Boott, containing her earliest, and only, detailed account, in writing, of the occurrences, which had led, *some eighteen months before*, to a breach with Mr. J. Wright Boott, out of which other difficulties had grown, *then more than a year old*.

The truth, in this portion of the narrative, as in numerous other instances, will be found to be an exact reverse of the

statements of the "Reply;" and I shall show the real state of facts to have been as follows :—

Unprovoked, unreasonable, and, as I now think, insane behaviour, on the part of Mr. J. Wright Boott towards Mrs. Brooks and myself, in the latter part of 1841, or early in 1842, occasioned a breach, which, for a time, extended only to him, and left us only where many other members of the family had long stood ; that is, on no terms of intercourse with Mr. Boott. At a later date, I was led to address a letter to Mr. Wells, founded upon matters, concerning himself and his own family, connected with Mr. J. Wright Boott, to whom, in consequence of new provocations, I wrote also. Of the letter to Mr. Wells, its causes and consequences, I shall have occasion to speak again. At present, I have only to state the fact, that my friendly intercourse with Mr. Wells came to an end in September, 1842 ; and that its termination was a consequence of the prior breach with Mr. J. Wright Boott, and of circumstances following it. In this state of affairs, Mrs. Brooks and myself maintained perfect silence, and carefully avoided either speaking, or writing, even in the family circle, on domestic occurrences so particularly disagreeable.

In June, 1843, Mr. William Boott, with whom Mr. J. Wright Boott, though living under the same roof, had long been on terms of total non-intercourse, was actually *struck* by his brother, in a paroxysm of unprovoked rage, and was compelled, in consequence, to quit the house. He, after consulting two or three of Mr. J. Wright Boott's best friends respecting him, pursued the same course of silence and reserve, which had been adopted by Mrs. Brooks and myself, except that he thought it his duty to keep Dr. Francis Boott informed of the facts, on which he grounded his own opinion that Mr. J. Wright Boott had become decidedly insane, and except that he was also drawn into some correspondence with Mr. and Mrs. Wells respecting him.

After a time, Mr. William Boott found himself in a false position, in consequence of very gross misrepresentations, from some quarter, of the nature and causes of his difficulty with his brother. By-and-by, Mrs. Brooks and my-

self began to find ourselves, also, assailed, by one friend after another, with stories, they had heard, of some great misconduct on our part towards Mr. J. Wright Boott. The fact of a family dissension was thus, by no agency of ours, fast getting to be notorious, and upon a false version. We were, of course, compelled at last, in self-defence, to make some corrections, and give some explanations to friends, who inquired of us whether this or that statement, respecting our conduct, was true. While this course of events was going on here, we learned, from London, that like erroneous accounts were getting to the ears of our mother and brothers there; and, at last, the alleged opinions of those relatives, abroad, began to be quoted, here, as evidence against us.

This unfortunate state of affairs, at home, had then continued a year or two, and was daily growing worse. Hopes, all along, had been entertained that Mrs. Boott might return to Boston; and there was even an idea, at one time, that Dr. Boott might be induced, also, to remove to this country. If so, it was thought that a better influence might be exerted, by one or both of them, over Mr. J. Wright Boott; whose insane ideas seemed to us to be fostered and inflated, rather than checked, by the only members of the family with whom he maintained any intercourse, or whom he chose to permit to enter the family mansion, of which, contrary to his mother's intention, and without her knowledge, he had absolutely usurped an exclusive possession.

These hopes of Mrs. Boott's return gradually died away. Meanwhile, tenderness to her aged mother, and unwillingness to annoy her with disagreeable news, had, during this period, restrained Mrs. Brooks from making the slightest allusion to these topics, or even to any topic remotely connected with them, in her letters to her mother, with one single exception; and that exception did not relate to the conduct of Mr. J. Wright Boott, nor suggest the idea of a family dissension. It was understood that Mr. William Boott's free communications to Dr. Boott were, also, withheld by him from Mrs. Boott, for the reason above suggested. In the mean time, we were informed, and, I shall prove, correctly informed,

that some of the family, here, with whom we unfortunately differed about Mr. J. Wright Boott, were constantly writing to Mrs. Boott, and so was Mr. J. Wright Boott himself, in a tone calculated to create false impressions, and to lead her judgement astray. It seemed possible that Dr. Boott's judgement, also, might thus be affected. Under these circumstances, Mrs. Brooks, (after one or two letters to Dr. Boott, containing allusions to the unhappy state of affairs in the family, and, particularly, to the recent assault upon Mr. William Boott,) concluded, at last, that it was proper for her to transmit to Dr. Boott, for his own information and government, a temperate, and I may say softened, statement of the facts, then a year or two old, particularly concerning Mr. J. Wright Boott's offensive conduct towards herself, and some of its consequences. This was in November, 1843, and is the same statement, which Mr. Lowell prints as transmitted in a letter under the date of November 30, 1842!

Dr. Boott did not think it best to communicate this to Mrs. Boott, nor did Mrs. Boott receive any accounts, except from her usual correspondents above mentioned. Mrs. Brooks was advised, however, by very judicious and sincere friends of the family, who were well aware of the true state of the case, that it was her duty to make her mother acquainted with facts, which might affect her mother's own movements, and lead, perhaps, to some amendment here. But she was still reluctant to disturb the tranquillity of Mrs. Boott, though sensible that erroneous impressions were conveyed to her from other quarters.

At length, in March, 1844, the death of Mrs. Lyman's husband had occasioned that lady to remove to her mother's house in Boston. One of the conditions, on which Mr. J. Wright Boott permitted her to come there, was, that she should not only live separately from him, and in her own apartments, but that neither Mr. Brooks, nor Mrs. Brooks, nor Mr. William Boott, should ever be allowed to visit her! These new occurrences, and the necessity of some permanent arrangement for Mrs. Lyman, were the particular occasion of a letter from Mrs. Brooks to her mother. She had, at

that time, (March, 1844,) come to the conclusion, in accordance with the opinions expressed to her by discreet friends, that it was not right that her mother should be kept, longer, in absolute ignorance, or under an entire misapprehension, of the causes of the very unhappy state of affairs in her own household and family. She, accordingly, for the first time, in that letter, called Mrs. Boott's attention to those subjects, referring for particulars to her own above-mentioned statement, sent to Dr. Boott several months before, and to the letters of the last year or two from Mr. William Boott, which, she had heard from him, were in Dr. Boott's hands.

Now Mr. Lowell, it will be seen, could not have been ignorant of most of the facts, I now state, and intend to prove; since all the family correspondence, existing in London, was transmitted to him, as he admits; [L. p. 128.] and a few garbled extracts from it are printed in his "*Reply*." Yet, the evidence of these facts is not merely suppressed, but an entire reverse of them is published, as truth; and, in my belief, *a date is altered*, by him or by his printer, so that a letter, *under a false date*, appears to give effect to certain statements of the "*Reply*," respecting the conduct of myself and Mrs. Brooks, *which its true date positively contravenes*. It is *possible*, I admit, though by no means likely, that Mrs. Brooks, writing in November, 1843, may have, herself, mistaken the time by *one whole year*, and may have misdated her letter accordingly. But, that her letter was, in fact, *written*, in November, 1843, and not, as the "*Reply*" represents, in November, 1842, is put beyond doubt by *Dr. Boott's answer* to the letter, in my possession, as well as by other evidence, to be stated in due time. I must, therefore, believe this important mistake to be Mr. Lowell's, until he proves the contrary, as he easily may, if the letter was really misdated, by simply exhibiting the original, which is in his possession.

I shall have occasion, also, to show a *series* of misstatements, misquotations, and misrepresentations, in various forms, in this part of the "*Reply*," which would be quite remarkable, if we had not already been through the case of the accounts. The reader will be able to judge for himself

whether these are made by design, or whether they have happened only because Mr. Lowell is,—as he says I am,—“exceedingly careless.” [L. p. 84.]

I shall be obliged to state, at some length, circumstances, respecting a certain letter, from me to Mr. Wells, which is made much of in the “Reply.” It is the same letter, from which I printed, formerly, a very brief extract, as I supposed, which turned out to be incorrect as a quotation, (though not in any thing material to the sense,) in consequence of an imperfection in my copy of it, as heretofore explained. [Ante, Ch. 4.] The intended quotation, it will be remembered, related only to one particular point; namely, the refutation of a report of my having acted oppressively towards Mr. Wells, in requiring him to find some person to take a certain mortgage off my hands, which I had held a long time as security for a considerable sum, lent to Mr. Wells for his personal accommodation. I stated that the property had then become worth so much more, than it was worth when I made the loan upon it, that Mr. Wells had no difficulty in effecting a transfer of the mortgage; and that he himself never considered that there was any oppression, or any intention of unkindness, on my part, in that transaction. I proved these statements by extracts from *Mr. Wells's own letters* to Dr. Boott. But Mr. Lowell, nevertheless, undertakes to contradict them. He says, that, if *Mr. Wells* experienced no trouble in getting the mortgage taken up, it was only because *Mr. Boott* transacted the business for him; that *Mr. Boott*, in truth, found great difficulty in effecting it; and that he, finally, “obtained the money from *Mr. Ebenezer Francis*, *but only on condition* that *Mr. Wells* should pledge, in addition to the estate, six of his shares in the Merrimack Manufacturing Company.” [L. p. 123.]

I shall contradict this statement, directly, by *Mr. Francis* himself, who says he *never made any such condition*, and was never *asked* to lend the money on the security of *the estate alone*. He, of course, did not *refuse* such additional security as was voluntarily *offered* to him. But, I shall show that it was only because the business was managed by so indis-

creet an agent as Mr. Boott, that such additional security was needlessly offered, and that the estate, alone, was quite sufficient to satisfy any capitalist, who desired to make a long loan of that amount on mortgage.

The residue of my letter to Mr. Wells related to other matters ; and, after much deliberation, I concluded, with the advice of my counsel, not to print it in my former pamphlet, because it was foreign to the direct issue, then open between me and Mr. Lowell, and involved explanations, which,—though very material to a right understanding of the causes of trouble in the Boott family,—could not be made without implicating *other persons*, whom I wished to keep as clear as possible from all harm by this controversy, nor without disturbing the feelings of Mr. Wells, an old friend, for whom I have always entertained, and still entertain, a true regard. But Mr. Lowell, failing in his usual sagacity, and judging by some standard of his own,—certainly not by mine,—probably had the weakness to suppose that I desired, *on my own account*, to conceal a part of the truth ; and that I withheld this letter, for that reason. Mr. Lowell, perhaps, thought the letter a good illustration of the idea, conveyed by him to the jury of inquest, when he described me as “a violent man;” [Ante, p. 77;] and, having himself but a very imperfect knowledge of the facts, in this part of the case, he seems to have believed that such a letter might be made to appear so unreasonable and harsh *towards Mr. Wells*, that showing it to the reader would serve to confirm the notion, every where held out, of unreasonable and harsh conduct on my part *towards Mr. Boott*; for it is quite a point of the “Reply” to lead its readers to believe, that my course of action, two or three years afterwards, concerning the disposition of the family property, did not result from a real want of confidence in Mr. Boott’s good management, nor from any doubt of the *truth of the accounts*, but that it was dictated, solely, by old feelings of animosity, arising out of a personal quarrel. At any rate, Mr Lowell appears to have thought that the letter might do me harm, and serve at the same time to divert attention from himself.

He prevailed upon Mr. Wells, it seems, to permit him to publish this letter ; and he has published it, with many comments, making my conduct *towards Mr. Wells* quite a prominent topic,—as if that had any thing to do with the real issue. This I esteem very unfortunate,—*not for me*, but for other persons. But what cares Mr. Lowell for such consequences ?

As to the mere *style* of the letter, I shall not undertake to defend that. It was written in haste, of which it bears marks ; and it was written under excitement, not without good cause. But I shall go to the bottom and substance of the letter. I shall show that it was written with an honest and true-hearted purpose, and, as I formerly remarked, in no spirit of unkindness to Mr. Wells ;—that every word in it, even that which may seem harsh, is perfectly true, and amply justified by the facts, which led to it ;—that, owing to the course Mr. Boott, (not then reputed insane,) was pursuing, a state of affairs had arisen in the family, in which it was impossible for any one of them to remain absolutely neutral, and that, in fact, no one of them did ;—that the conduct of Mr. Wells's own family, in connexion with Mr. Boott, had been such as to call for his paternal remonstrance, at least ;—that my relations to one of his sons, (Mr. Francis B. Wells,) were most peculiar ; (this I shall prove by letters of confidence from Mr. Francis B. Wells himself, which I have never yet shown to any one, except my counsel;) and that they were such as to authorize, and in my judgement require, under the circumstances, the strong representations, which I made concerning him, for his own benefit, and the benefit of his father and family. In brief, I shall show that a case then existed when a temperate and firm interference, on the part of Mr. Wells, might probably have prevented a part, at least, of the mischief, which followed, and of which I then had a terrible foreboding, as the letter plainly proves, and as events afterwards justified even beyond my fears.

I can not, in a mere general outline, go further into particulars on this head. It would be a great relief to me, if I could see my way never to do so. I desire, however, to say,

that I mean not, now or hereafter, to impute *blame* to Mr. Wells for pursuing the course, which his judgement, misinformed upon many facts, may have dictated as proper for him, though I still think that his judgement was mistaken. Neither do I mean to impute to any member of the Wells family *greater* blame than that of very indiscreet conduct, causing much thoughtless provocation, and tending, undesignedly, it must be presumed, to increase and extend the family dissension. But my opinion is, and this I shall endeavour to maintain, that a different course, pursued by Mr. Wells and his family, would have averted much evil ; and that it was impossible for myself and Mrs. Brooks, under the actual circumstances, to maintain the same harmonious intercourse, as formerly, with that branch of the family. Dr. Boott, it will appear, reprehended, as strongly as we did, the injudicious action of the ladies in that family ; and he did so, judging, not from our representations, but from their own letters. He differed from us, at that time, only in supposing, upon the partial information he had, in London, of the position of affairs here, that we might, and should, have made *a distinction between them and Mr. Wells*, in the continuance of family association. Dr. Boott's confidence, in the impartial justice of Mr. Lowell's *disinterested* representations, may have, since, altered his views of the whole case ; but, what his views were at the time, and what they were founded upon, will appear, very distinctly, by his own letters ; and I think his idea of drawing, and preserving, a *marked line* between *Mr. Wells* and *his own family*, in respect to social intercourse, will appear to have been more amiable than practical.

Many smaller matters I shall not now anticipate. But the reader may rest assured, that I shall not omit to go to the bottom of the argument, that there was *reasonable ground* for Mr. Boott, as a *sane man*, to entertain certain ideas, which, the "Reply" for the most part admits that he did entertain, in the last years of his life ; namely, the idea, that certain near relatives, and certain former intimate friends, were *combined in a league* against him ;—the idea, that Mr. William Boott was in the habit of *intercepting and purloining his letters*, and was

aided, in doing so, by the *clerks in the post-office* ;—the idea, that he was *surrounded by spies*,—that Mrs. Lyman was one of them,—and that she was placed *by me* in the same house with himself, in order that she might serve *me* in that useful capacity. These, and certain other phantoms of injustice and persecution, equally extravagant, it is seriously argued, in the “Reply,” upon certain evidence there exhibited, were *quite rational ideas!* That is, the circumstances are said to be such, that a man, described as possessing, not only the most amiable traits of character, but, a vigorous intellect, and perceptions without a cloud, might well have drawn those inferences from the facts before him.

Some of these charges seem almost too ridiculous for answer. The only *overt act*, attributed to *me*, in relation to these subjects, is, I believe, *the having placed Mrs. Lyman in the house as my spy!* In respect to that, I happen to be able to prove, that I had nothing to do with her going to that house, and that Mr. Boott, as a sane man, must have known it ;—that her husband’s death made it necessary that she should seek some new abode ;—that Mrs. Brooks and myself invited her to make our house her home, until she could make some other arrangement more agreeable to herself ;—that other friends advised her that her mother’s house, as the common family home, kept open at Mrs. Boott’s expense, and then unoccupied, except by Mr. J. Wright Boott and the servants, was the most proper place for her to go to ;—that her removal to that house was privately agreed upon, between herself and Mr. Boott, on certain terms, which he prescribed, and which she, though she considered them hard, assented to ;—that her principal adviser, in concluding the arrangement, was Mr. S. C. Thwing, who had been selected to administer upon her husband’s estate,—an office, which I declined ;—that he was the only person, besides Mrs. Lyman herself, who conferred with Mr. Boott upon the subject ;—that Mrs. Brooks, when she was informed of the plan by Mrs. Lyman, earnestly remonstrated with her against it, in the presence of Mr. Thwing, and, expressly, upon the ground that it was not *safe* for Mrs. Lyman to live in the house with

Mr. J. Wright Boott, in his then state of mind, and after the personal outrage, which he had committed on Mr. William Boott. Mrs. Lyman, however, could not bring herself, at that time, to believe that Mr. J. Wright Boott was actually insane ; and, notwithstanding conduct towards herself, which, it would seem, nothing short of insanity could have prompted, she did not then view it in that light ; but, attributing his harsh behaviour to a less pardonable cause, and apprehending no personal danger from living under the same roof, she determined to adhere to her plan. For myself, I was not, at that time, looked to, even for counsel, in Mrs. Lyman's affairs.

In short, all that part of the "Reply," which relates to my conduct in family matters, will be found, if I am capable of estimating the weight of evidence, in a case which concerns myself; to be as great an imposition upon the public, as that which relates to the accounts.

My only causes of regret are, that I can not expose the "Reply," here, as it deserves, without occasioning pain to persons, who are not guilty of the libel ; nor without making a use of private letters, from persons yet living, as well as from persons deceased, for which these confidential communications were never intended ; nor without seeming to be my own trumpeter, by printing, as the best proof of my amicable relations to the various members of the family, acknowledgements and commendations, from warm-hearted people, some of which I am positively ashamed to print, for the simple reason that they run so far beyond the humble merit of mere friendly services, which common good will, and fortunate circumstances, enabled me to render.

CHAPTER LXVIII.

A RECAPITULATION, AND SUMMARY OF THE CONTROVERSY, AS IT
NOW STANDS.

Some of the collateral topics, which have been discussed in connexion with the subject of Mr. Boott's accounts, properly belong to that subject, from the nature of the transactions. Others have been forced into the discussion by the allegations, or suggestions, of the "Reply." Those, which relate to Mr. Lowell's personal conduct, are placed in the same connexion, because the conduct, complained of, is believed to have been a consequence of his agency and interest in the settlement of the accounts.

The reader may well have become wearied, in following out the numerous ramifications of a subject so complex. It has, necessarily, required the exploration of an extensive range of facts, not always easy of detection. The subject is made still more complicated, and perhaps confused, by the false issues interposed, and by snares for the understanding dexterously thrown in the way, by the opposite party.

The process of disentangling, exposing, making perfectly plain, and establishing by evidence, the realities of such a case is, necessarily, a slow one ; especially with a stock of materials, in the way of proof, so very slender as that, which the author of the "Reply" intended to leave at my disposal. I have derived, notwithstanding, much valuable aid from his pages. For this, I should be bound to express a sense of grateful obligation, were it not that the contribution seems to have been wholly involuntary, on his part. I believe that all the admissions of the "Reply" will be found to arise out of the silent operation of that general law, which forbids the making of a consistent whole by the mixture of falsehood and truth. Ingenuity, so exercised, rarely, if ever, fails to

defeat itself,—producing a misjoined and impossible monster.

In a matter of accounts, I have, of course, been obliged to proceed step by step. The state of the controversy has required me to pause at each, for the purpose of showing what my former statement was, what Mr. Lowell's is, and what are the real facts, according to the evidence, which is submitted to the reader. I have thought it best, too, to answer false suggestions, and to remove obstructions, on the spot where they presented themselves, though at some expense to the progress of the argument, rather than to leave them behind me, and appear, at the time, to overleap or avoid them. This method of proceeding, though desultory and digressive, seemed to me, upon the whole, the most appropriate, if not the only, mode of dealing, effectually and finally, with the brilliant generalities, ingenious sophisms, unscrupulous misstatements, and taking displays of rhetoric, irony and sarcasm, by which, however ill-suited to the subject, the author of the "Reply" has contrived, not unsuccessfully for the moment, both to amuse, and to mislead, even intelligent readers, who committed the fundamental error of taking it for granted that unqualified assertions, boldly made *by Mr. Lowell*, must have a solid foundation in truth.

I have taken more than usual pains in this branch of the case, because, as I remarked in the outset, the question of the account lies, in my apprehension, at the bottom of my whole controversy with this gentleman. Not that any pecuniary interest was supposed to be at stake, when I entered the lists with Mr. Lowell. In that point of view, it can not fail to be understood, that, whether the accounts were right or wrong, real or fictitious, the result, so far as money is concerned, was, in my own belief, quite as indifferent to me, as it can be to any of my readers; since all my claims on the late Mr. J. Wright Boott, whatever they may have been, and whatever they might otherwise be worth, I had voluntarily released twice over. What the effect of subsequent discoveries may be, on such a settlement as was in fact made, is another question. I only mean to remind the reader, that it was

not the account itself, neither its form, nor its substance, which, originally, stirred this controversy ; but, as I formerly remarked, *the use covertly made of it by Mr. Lowell to my injury*, coupled with an obstinate refusal, when the fact was discovered, to admit, retract, explain, or concede, any thing. The errors of Mr. Boott, in the management of his father's estate, and in all other matters,—his accounts, with all their imperfections,—his mistakes, and his hallucinations of every kind,—would have slumbered with him quietly in the grave to this day, but for the unfair dealing towards me, in the first place, and the singular pertinacity, in the next, of a gentleman, who professes to be his friend and vindicator, and yet compels me, in self-defence, to make these private affairs subjects of a controversial discussion.

Prominent among these subjects is *the truth of an account*, for which Mr. Lowell has made himself responsible. His connexion with the origin of the account, the manner of its settlement through his agency, the use he afterwards made of it, and the character of his printed statements respecting it, in answer to my former remarks, have caused this to become the leading topic of our controversy. It is, besides, the only one difficult in its nature to make perfectly comprehensible to most readers. This I hope has been done. But it seems indispensable, before proceeding further with the less formidable subjects glanced at in the last chapter, to take some retrospect of the ground, which has been gone over in so much detail, and with so many digressions, for the purpose of noting the principal steps, collecting results into a general view, and seeing how the main question now stands between me and Mr. Lowell.

I began with the assertion that Mr. Lowell was, in truth, the assailing party. [Ante, p. 3.]

In proof of this, I referred to statements made behind my back, on the occasion of an inquest held upon the body of the late Mr. J. Wright Boott, and to the impression they produced. I showed that Mr. Lowell, acting, professedly, as my friend, and as a friend of the family, was the only person present, who assumed, in our behalf, to direct the course

of inquiry ;—that no evidence was introduced, though much, to Mr. Lowell's knowledge, existed, tending to show unsoundness of mind in the deceased, as a means of accounting for his suicide ;—that, on the contrary, Mr. Lowell himself became a voluntary witness, and testified that, during an intimate acquaintance of nearly thirty years, he had never seen any indication of it ;—that he also stated, in substance, to the jury, that the deceased, being a man of fine feelings, great integrity, and a nice sense of honour, had been much troubled by the fact that he had been charged, untruly, with mismanaging his father's estate ;—that he had been summoned, by some of the heirs, to settle his accounts as executor ;—that the accounts were disputed ;—that Mr. Lowell himself assisted him in making them up ;—that, instead of any deficiency, there was found to be a clear balance due to him of \$25,000 ;—that these accounts, though disputed, were allowed and passed by the judge of probate, and were “a triumphant vindication of Mr. Boott ;”—that, notwithstanding this, some of the heirs, declaring their want of confidence in his agency, persisted in refusing to execute a certain deed, needful to carry into effect a fair bargain made by him, at which he was greatly troubled in mind ;—that Mr. Lowell named me as one of the heirs, who had caused this family feud, and spoke of me particularly as a “violent man,” and attributed the death of Mr. Boott to those unhappy dissensions, arising out of my groundless charges against him. [Ante, Ch. 9.]

I further showed that a letter was produced by Mr. Lowell at the inquest, said to have been written by the deceased shortly before his death ;—that this letter was not submitted to the inspection of the jury, but that a portion of it was read to them, by Mr. Lowell, declaring the writer's intention of taking that method “to end his wretchedness ;”—that the reason given for not reading the residue was, that it contained charges against some person or persons,—naturally understood, from all that was said, to include me,—which the writer was not there to substantiate ;—[Ante, pp. 113 to 115.] that the jury were impressed, by all this, with the belief that

Mr. Boott was not under any influence of a deranged imagination, but had become wearied of life, with good reason, in consequence of the unjust and cruel treatment he had experienced, chiefly from me ;—and that, in conformity with this belief, their verdict established the simple fact of suicide, and negatived, by implication, the idea of insanity.

It is true, that Mr. Lowell does not *admit* that he made, on that occasion, the greater part of the remarks and suggestions attributed to him. On the contrary, he positively denies some of them ; others he denies by implication and argument. I hold it, nevertheless, to be established, beyond question, that he did, partly by direct statement, and partly by insinuation, convey those ideas to the jury ; and I have only to refer the reader to some of the early chapters of this volume, in which the evidence on that head is stated and analyzed, and the declarations of the various witnesses who were present, whether cited by me, or by Mr. Lowell, are carefully compared with each other, and with the statements of the “Reply.” The conclusion, to which they lead, is, in my mind, inevitable. [Ante, Ch. 9, 13, 14.]

It further appears, without contradiction, that, immediately after this verdict, rumours arose, and were extensively believed,—particularly, I may now add, in Mr. Lowell’s large and influential circle of acquaintance,—to the effect that the death of Mr. Boott was justly attributable to my inexcusable conduct, conjointly with that of some other members of the family.

Now I ask, in the first place, whether these statements from Mr. Lowell, in the hearing of a number of persons, and these common rumours, immediately following them, do not stand in the relation of probable cause and natural effect ? If they do, was I not right in holding Mr. Lowell answerable for that consequence, and requiring him to justify the statements which had caused it ? If he has failed to do so, in any essential particular contributing to the general conclusion,—if any part of his statement, imputing the death of Mr. Boott, directly or indirectly, to my error and misconduct, was *untrue in fact*, and contrary to his better knowledge,—or, even if any

part of it was *literally* true, and yet pointed to that false conclusion, in consequence of his omission to state other circumstances equally well known to him,—in short, if there was the slightest infusion of falsehood, either by suggestion, or suppression, in the entire statement, and, especially, if the statement itself was an unnecessary statement,—I ask whether this did not constitute, under the circumstances in which I was placed, a very gross and aggravated assault upon my character? Was it the less aggravated by the circumstance that it was made in my absence, and without my knowledge, and under the guise of executing an office of friendship?

All that part of his statement to the jury, which related to the accounts, and to Mr. Boott's management of his father's estate, and to my supposed error and misconduct in that regard, I think I have shown to be essentially untrue, and that Mr. Lowell must have known it to be so. The reader shall judge.

I next addressed myself to certain plausible objections of Mr. Lowell, to my former pamphlet, as an unnecessary publication of family dissensions, and an unjustifiable attack on the memory of the dead.

To this end I showed that Mr. Lowell's own conduct, and other circumstances, not under my control, left me no other practicable form of redress,—at least none reasonable in its nature, and likely to be effectual for my vindication,—than that, which I reluctantly adopted as my last resort. [Ante, Ch. 1 to Ch. 3.]

The reader will remember that I was entirely ignorant, for more than eighteen months, that *any* statement had been made by Mr. Lowell on the occasion of the inquest, other than that which appeared in the coroner's official report; and his statement, according to that report, was confined to an expression of disbelief and ignorance of any thing indicating insanity. Such a declaration from Mr. Lowell took me by surprise, for reasons that I have stated. [Ante, Ch. 64.] But the declaration, however surprising, afforded nothing that I could fairly take hold of. I had no right to call Mr. Lowell to account for that negative testimony in a mere matter of opinion; nor

could I say, upon that information only, that the reports concerning me took their origin from him. The only tangible circumstance, then known to me, which seemed to give countenance to these injurious rumours, pointed to a different source. I refer to the letter written by the deceased in his last moments. This, Mr. Lowell told me, contained certain charges against me and other members of the family. Such charges, if known as coming from such a source, might tend to account for the rumours, which thickened against me; but Mr. Lowell also told me that nobody, but himself, had ever seen, or should see, the letter, and I was ignorant of what he had said to the jury about it. I had reason, it is true, to distrust the exact truth of his declaration that he had not shown the letter to any one. Parts of it, at least, appeared to have been either shown or read to the coroner. I knew of no other instance; and for this there was the excuse of a supposed duty to the coroner. [Ante, p. 727.] I could not be *sure* that the reports, to my injury, came from that single official communication. I had reason, it is true, to suspect that I had been misled respecting Mr. Lowell's *intentions* in volunteering to superintend the inquest. I had been surprised by his clear and positive testimony to the point of Mr. Boott's *sanity*, after what had, so recently, passed between us, and by the verdict to which his testimony led, and by his possession of a letter from the deceased so soon after his assurance to me that he had received no such letter; and I was greatly dissatisfied with other parts of his conduct, which had then become known to me. [Ante, Ch. 62 to Ch. 66.] I thought he had dealt by me ungenerously, and unfairly, in not acquainting me with the fact of his having the letter before the inquest. I doubted, even, whether it was not in his possession at the time of our conversation, when he gave me to understand otherwise. I was sure, at any rate, that he had not told me the *whole truth*, when he said *no one* had seen the letter, without excepting the case of the coroner. But, although my confidence in Mr. Lowell was lost, all this afforded me no sure ground for imputing to *him* the principal grievance, under which I was suffering. I considered

myself to have been very shabbily treated, by a gentleman, whom I had supposed to be a friend, and fit to be trusted; but that was all I could say. I could not lay my finger, with certainty, upon any act done, or word uttered, by him, as the immediate cause of my suffering.

The letter of the deceased, with suspicions that its contents had been unnecessarily made known, was all that then *appeared* for a wronged man to act upon. But I believed that letter of the deceased, as I did his suicide, to be the work of insanity. Others, however, who might seem to have had equal opportunity of judging, would not admit that he was insane. Mr. Lowell had *sworn* that he was not, so far as *he* knew; and he had assured me that this letter, in particular, "is written with great calmness, as befitted the occasion, and evinces no aberration of mind." [Ante, p. 724.] This, to be sure, I did not believe one word of; since I was also told, by Mr. Lowell, not only of charges against me, which, I knew, had no sound foundation, but also, that the letter purported to give a history of the family dissensions, and of Mr. Boott's supposed grievances; and, on these subjects, I felt a perfect conviction, as I still do, that Mr. Boott *could not* have written, *sensely*, at any time within the two or three last years of his life. But how could I make others sensible of this, without knowing, precisely, what the language and statements of the letter were? And how could I avoid the effect of such statements, coming from a man whose *integrity* was not questioned, and who was no longer alive, to answer for what he had written, or said, unless I could establish the fact that he was insane when he wrote the letter, and show that these injurious statements, attributed to him, were among the hallucinations of a diseased mind?

The reader will remember, that, under these impressions, I took every possible step, proper for me to take, to obtain a sight of the letter, as a necessary preliminary to enable me to judge, understandingly, whether I was called upon to defend myself, in any form, against its charges or not. Mr. Lowell obstinately refused to show it to me, and could only be brought to qualify his former declarations, concerning the

marked sanity of the production, so far as to say that its charges against me produced *no effect on him*. He was asked whether he would consent to put that in *writing*, for my satisfaction and defence, so far as it might go ; and his answer was, that he should be willing to do so *only upon condition* that Mr. Boott's *will* should not be disputed, *either by Mr. William Boott, or by me*, on the score of incapacity in the testator ;—in other words, that, without even seeing the letter, both Mr. William Boott and myself should,—by allowing such a will, disinheriting us, to pass without question,—impliedly admit, contrary to our own belief, that the charges said to have been made by the writer of the letter, who was also the maker of the will, were not hallucinations, but the deliberate, solemn, dying declarations of a man of sound mind and disposing memory, whose integrity stood unquestioned. [Ante, Ch. 66.]

The attempt to impose this unreasonable condition,—coupled with an obstinate refusal to show me a letter so nearly concerning myself, and with the promulgation of Mr. Lowell's opinion that it was the work of a sound mind, and with the fact that the existence of the letter, and the nature of its charges, had, by some means, become notorious,—determined me, it will be recollectcd, to adopt a course, which might never have occurred to me, but for Mr. Lowell's suggestion ; namely, to dispute the probate of the will, for the purpose of bringing the sanity of the testator to the test of a judicial decision ; and, at the trial, to compel a production of the letter, that its insane delusions might be exposed. Mr. William Boott, for reasons similar to mine, coincided with me in this course. But it will be remembered that Mrs. William Lyman, afterwards, determined, under advice, to dispute the probate of the will on her own account ; and that both Mr. William Boott and myself, not desiring, or intending, to obtain for ourselves any *pecuniary* benefit from the result of the litigation, assigned to Mrs. Lyman all our right, title and interest, as heirs at law, in the estate of Mr. J. Wright Boott. The consequence was, that she became the only opponent of the will, who possessed a legal, or *pecuniary*, interest, adverse to its allowance. Hence,

she was, necessarily, the sole appellant from the *pro forma* decree of the judge of probate. [Ante, Ch. 3.]

This assignment of my pecuniary interest to Mrs. Lyman, was, as it turned out, a mistake on my part; since I thereby deprived myself of all personal control over the suit. Mrs. Lyman, afterwards, from motives of her own, without consulting either me, or Mr. William Boott, withdrew her appeal. This gave effect to the decree appealed from, and established the will. It was too late for any other party to appeal; and I found myself, thus, unexpectedly, precluded from all possibility of showing the insanity of the late Mr. J. Wright Boott by judicial proof. I was equally deprived of all means of compelling, by process of law, a production of the letter, which Mr. Lowell refused to permit me to see. [Ante, Ch. 3.]

The reader will also remember that it was not until *after* the suit, concerning the will, had thus suddenly terminated, that I became informed of Mr. Lowell's statements to the jury, a year and a half before, *not contained in the official report* of the inquest. The truth, then, for the first time, flashed upon me, beyond my former suspicions. I perceived that, if my information was correct, Mr. Lowell had made statements, in matters of fact, untrue in their substance and effect, deeply injurious to me, and fully adequate, in my judgement, when connected with the circumstance of the letter, and with the verdict found at the inquest, to account for the rumours, which had thereupon arisen, and under the effects of which my reputation still suffered. [Ante, Ch. 1 to 3.]

My first business, of course, was to ascertain that there was no material mistake in the information I had received; and, if not, to ascertain whether any voluntary reparation would be made by Mr. Lowell. The reader hardly needs to be reminded of the correspondence invited by me for those purposes. He can not have forgotten Mr. Lowell's evasion of all direct answer, so long as it was possible to evade, and his refusal, when evasion was possible no longer, to make *any* answer to my inquiries respecting the statements he had made *in matters of fact,—especially those relating to the accounts and*

their settlement. His very slender excuse for the refusal can scarcely have been forgotten, nor his peremptory denial that any wrong had been done to me, for which reparation was due, or respecting which I had any right to demand an explanation. [Ante, Ch. 8.]

I was thus compelled, as my next step, to resort to proof before a magistrate, by declarations from nearly every member of the coroner's jury, of the nature and substance of Mr. Lowell's statements to them. [Ante, Ch. 9.] They were such, and the ground taken by Mr. Lowell in our correspondence was such, that, in the absence, as I was advised, of any legal remedy, or means of instituting an inquiry at law into the truth of the case, no alternative remained but either to submit in silence to very gross imputations upon my character, founded on these false statements of Mr. Lowell, or to attempt my own vindication in print. [Ante, Ch. 2.]

This necessity gave birth to my former pamphlet,—not published, nor even very generally circulated, but placed in the hands of those persons, whom I wished to inform of such facts as seemed to me essential, to set me right in their estimation. The character of that pamphlet,—its tenderness towards the memory of Mr. J. Wright Boott, when I was compelled to speak of his errors,—its reserve on points affecting other members of the family, maintained even to the injury of my own defence, while I was compelled, nevertheless, to give some partial insight into the causes of the family dissension,—its moderation even towards Mr. Lowell, in a case of great personal injury suffered at his hands,—these are matters, for which I may confidently appeal to the pamphlet itself; especially now that the truth of the case may be judged of by the light of the further disclosures contained in these pages. This pamphlet of mine, the reader sees, was followed by a "Reply" from Mr. Lowell, extensively circulated, and of so remarkable a character, that one hardly knows which to be most amazed at, the audacity of its assertions, or the overbearing pretension of its style. Nothing short of unquestionable verity, shown by the clearest proof, could justify, or excuse, either the one or the other. It is enough,

for my present purpose of recapitulation, to remind the reader that, after partly denying, and partly seeking to excuse, the several matters, which Mr. Lowell is proved to have declared before the coroner's jury, this "Reply" reiterates, in print, the very same matters, in substance, as truths, and promulgates, also, under the pretence of repelling an imputed attack on the dead, much new matter, defamatory of me, as well as of others, and so arranged, that the publication amounts, in reality, to an affirmation of the truth and justice of the worst rumours circulated against me, originating, as they did, mainly, if not solely, from Mr. Lowell's own former remarks and suggestions. [Ante, Ch. 8.]

If, then, these former remarks and suggestions, as well as those of the "Reply," are shown to have been unwarrantable, I trust I shall not have failed to satisfy every impartial reader that Mr. Lowell was, from the beginning, and, by the character of his late publication, still is, in truth, the attacking party; that he has, wilfully, provoked and compelled the present contest; that his pretence of imputing to me a design, and desire, to asperse the memory of the late Mr. Boott, as the motive of my appearance in print, and his pretence of arrogating to himself the magnanimous part of a disinterested friend of the family, and vindicator of the dead, are mere hollow pretences, set up for the purpose of screening himself; and that, finding me shut out by circumstances from a judicial investigation, he has pertinaciously excluded me from every other alternative, consistent with a just regard to my own reputation, but that of appeal to the judgement of our common acquaintance, for the trial of the truth of our respective statements.

I come then to the question of *truth*; and the argument lies, briefly, thus:—

The original attack upon me consisted in making certain verbal representations, which caused it to be believed, by many persons, that the late John Wright Boott died the victim of a family conspiracy, of which I was the leader. The attack, in its present shape, goes the further length of attempting to prove, that this was a belief well founded in fact,

and that Mr. Boott himself rationally concluded that death was his only refuge from his persecutors.

The portion of the "Reply," which has now been thoroughly examined, takes up that specification of this general charge, which most especially relates to myself. It will be found to embrace almost the only overt acts of *mine*, which are subjects of complaint. The residue of the "Reply" rests, almost entirely, upon the conduct and language of *other persons*, supposed to reflect upon me through the notion of a conspiracy.

The specification, I speak of, may be stated, in substance, thus:—*Persecution of the late Mr. J. Wright Boott concerning his accounts and dealings as executor, accompanied by false accusations of gross mismanagement in that capacity, occasioning great loss to parties interested under his father's will; and that these false accusations were wilfully persisted in, after reasonable proof that they were unfounded.*

The alleged proof of the *falsehood* of these imputed accusations is the allowance, by the judge of probate, of a *disputed account*, claiming a balance of \$25,000 as *due to Mr. Boott*. That probate decree is set up as a *bar*, in honour and conscience, as well as in law, to all inquiry concerning the reality of the balance claimed and allowed. [Ante, Ch. 16.] But, without relying wholly upon that, the "Reply" proceeds with an elaborate endeavour to satisfy its readers, that the account, with certain explanations of its seeming statements, is, substantially, a just and true account; that Mr. Boott was, in the main, an excellent manager of the trust property in his hands; that his errors, if there were any, were errors of *form* only; and that *no loss* was suffered, by any party interested under his father's will, in consequence of his management of the estate.

My answer, in the foregoing pages, has been, in the first place,—That the allowance of the account, by the judge of probate, proves nothing as to its correctness, and constitutes no impediment, in the pending issue between me and Mr. Lowell, to a full and free examination of its statements, or of its omissions:—

1. Because it was passed *without examination or proof*, and only by consent, under an agreement of *compromise* between me and Mr. Lowell, which *purposely avoided and excluded* all inquiry into the account, in consideration of Mr. Boott's resigning his trust, and with the intention, mutually expressed between me and Mr. Lowell, of burying forever the dissensions, which had arisen respecting Mr. Boott's conduct as executor :—[Ante, Ch. 16.]

2. Because the account was passed *upon a false representation* by Mr. Lowell to the judge of probate, supported by the *unauthorized signature of a sealed instrument in my behalf*. For it will be remembered, that, by means of that instrument so signed, it was represented that I had consented to a general discharge of Mr. Boott from all claims, held by me in my capacity of *trustee*, jointly with Mr. Lowell, as well as from claims held on my individual account ; and I have shown that this use of my name was made, *to pass the account*, notwithstanding Mr. Lowell's perfect knowledge that I positively *refused* to be a party to the discharge *in that capacity*, or to release any claims excepting my own. The fact, that my name had been so used, remained undiscovered by me for three years :—[Ante, Ch. 60.]

3. Another reason, why the allowance of the account on such a compromise cannot now be justly set up by Mr. Lowell, in bar of further inquiry, is this :—Mr. Lowell himself *first violated* the spirit of our compromise, and *put the truth of the account directly in issue*, when he appealed to its statements, and to its allowance by the judge of probate, (without disclosing the manner in which it came to be allowed,) as “a triumphant vindication of Mr. Boott,” and as *proof* that I had charged him *falsely* with mismanagement of his trust, and loss of a part of the property committed to him. [Ante, Ch. 9, 16.]

In the next place, my answer is, that there *never was any persecution of Mr. Boott*, on the subject of his accounts and dealings as executor or trustee, nor on any other subject, by me, or by any other member of his family ; and that there is not the slightest foundation for the suggestion of a conspiracy

against his peace and happiness, nor any truth in the charges of unmerited harshness towards him, on the part of myself, or on the part of any individual designated by Mr. Lowell. This charge of the "Reply" I have not yet fully examined, because it runs into matters disconnected with the accounts. It involves points, respecting Mr. Boott's state of mind and conduct towards others, and respecting the conduct of others towards him, at different periods of his life, which are quite independent of any question about *management of property*. The discussion of these points will call for an exhibition of facts and evidence, which the reader has not yet seen. He has seen only a general summary, in the last chapter, of what I propose to show. [Ante, Ch. 67.] The particulars belong, mainly, to a distinct head of my defence, or rather to my defence against a distinct set of charges; which defence, when fully made, will be found, if I am any judge of evidence, just as clear and conclusive against Mr. Lowell's imputations, as that which relates to Mr. Boott's management as executor. Thus far, I have confined myself, to the *accounts*, and to topics intimately connected with them.

But, so far as the idea of *unmerited harshness* of conduct, towards Mr. Boott, is *connected with the question of his accounts*, a few prominent facts have already appeared, which have an obvious bearing on the question of *general maltreatment*. Of these, it may be proper, here, to remind the reader.

It has appeared, incidentally, that Mr. Boott, instead of being *persecuted*, by any portion of the family, on the subject of his *executorship*, was treated with a degree of indulgence and forbearance, in that relation, beyond any example that ever came to my knowledge.

It has been seen, that, from 1817 to 1844, he was permitted to hold and dispose of the property, which came to him in that capacity, just as he pleased, without any account of it, rendered or called for;—that, in 1830, it became known to Mr. Kirk Boott, and to me, that a great part of the family property was lost, the whole of it jeopardized, by Mr. J. Wright Boott's

injudicious and improper management, and yet, through tenderness to him,—a false tenderness, perhaps,—the remaining property was left in his hands, subject to the liens, with which he had incumbered it, and no attempt was made to force an account or a resignation ;—that, in 1833, every heir in this country, who had, or supposed that he had, any claim upon him for a present debt, joined in a voluntary release of it ;—that I was active in promoting this, as I was in aiding Mr. Boott about effecting settlements with his partners, and creditors, and wards ;—that, to avoid a family rupture, ruinous to Mr. Boott, I continued to acquiesce, silently, in permitting him to manage and use, without accounting to any body, what was left of the trust funds, until I was put to an election, in 1844, *after* the family peace had been broken, whether I would, *then*, be instrumental in *enlarging* his trust, by the sum of \$46,000, at a time when I believed him to be insane, and knew him to be, at any rate, most unfit to be the family trustee, and to be contemplating a most injudicious investment of a portion of this very fund ; or whether, by declining to sign a certain deed, which it was perfectly optional with me to sign or not, as I pleased, I would effect a quiet surrender of the trust into more suitable hands. [Ante, Ch. 15, 25, 28, 33, 34, 37.] I have shown, so far as a negative averment of this description can be shown, that, instead of attempting to *propagate charges* against Mr. Boott of waste, and mismanagement, and misuse of trust property, to the injury of his general reputation,—although it was my object, for the benefit of the family, to bring about a surrender of his trust,—my statement of reasons for declining to execute the deed was made only to the parties, and their counsel, with whom I was compelled to treat on that subject ; and that it amounted only to a general declaration of my want of confidence in his *good judgement and capacity*, as a manager of that trust, for causes assigned, which carefully avoided the *slightest* imputation upon his *integrity*. [Ante, Ch. 57.] And here I am content to leave the subject of my conduct towards Mr. Boott, until I come to consider, in detail, Mr. Lowell's proofs of the pre-

tended conspiracy, and to show the real cause of the dissensions, which arose in the Boott family.

But the *main* answer, which I have made to Mr. Lowell's charge of persecuting Mr. Boott with *false accusations*, respecting his *executorship*, consists in showing,—

First, that those accusations, so far as any were made, either at the time of my endeavour to effect a change of the trusteeship, or before, or since, in whatever language they may have been expressed, were *perfectly just and true*; and that *the account*, cited by Mr. Lowell in proof that the accusations were false, is, essentially, *a fiction*:—

Secondly, that Mr. Lowell *knew*, extremely well, that my allegation of mismanagement by Mr. Boott was true, at the time he published it as a falsehood; and that he *knew*, equally well, that the account was a fiction, when he cited it as proof of a fact, and when he printed an argument, bolstered up by the weight of his own assertions and personal influence, to induce his readers to believe in the reality and correctness of this account.

Have I not shown that the account is essentially a fiction, and that the charge of mismanagement was well founded?

Certain general facts are placed beyond dispute.

1. Mr. J. Wright Boott had the entire control of all the personal estate left by his father, whatever it may have been. He was the only surviving partner, and the sole acting executor; and the executor was also charged with all the special trusts of the will, and was the sole testamentary guardian of the minor children. He held this position for nearly seven and twenty years, during which he had never settled an account, except of the formation of the particular annuity funds, required, by the will, to be separated from the residue of the estate; nor had he ever filed an inventory, or statement of any kind, to show how much that residue amounted to, or of what it consisted, besides the mansion-house, the moveables in it, a small piece of land valued at \$500, a pew, and a store, which was devised to himself. [Ante, Ch. 15.]

2. The special trust funds, set apart, in 1818, and specifically invested by him *as executor*, were broken up, within a

few years, by sales of all the stocks composing them ; the proceeds were not specifically re-invested *as executor*, nor *as trustee* ; and nothing, afterwards, was ever held by Mr. Boott, visibly, in either of those capacities, until certain property, subject to certain liens and claims for his private engagements, was, in 1831, placed in his name as executor, or otherwise bound for his trusts, through my intervention, at the request of the late Mr. Kirk Boott, for the purpose of securing what was really trust property against his general creditors. [Ante, Ch. 27, 29, 30.]

3. At the time of which I speak,—after the conveyance to me of certain property, in trust, to secure the payment of debts due from him, as guardian, to his wards of the F. Boott family,—after the sale of the store in State-street, devised to him by his father,—and after the sale to his partners, Messrs. Lyman and Ralston, of his interest in the Mill Dam Foundry,—there was *not one dollar's worth of visible property*, held by Mr. Boott, *unpledged for his own debts*, to represent the trusts under his father's will, with the single exception of a stable in Bowdoin-street, valued by him at \$3000, but worth, in truth, not more than \$1500. [Ante, Ch. 30, 35.]

4. The omission to settle the estate cannot be set down to a mere inadvertence. The importance of the subject was not overlooked by others, nor did they neglect to lay it before Mr. Boott. On the contrary, it has been shown, that a general settlement of his family accounts was pressed upon Mr. Boott, in 1831, as far as it could be, short of legal compulsion, or of a personal rupture, by the united endeavour of the late Mr. P. T. Jackson, the late Mr. Kirk Boott, myself, and Mr. John A. Lowell. The letters of Mr. Jackson and of Mr. Kirk Boott are before us. The former gentleman placed the necessity of such a settlement on the strongest ground possible ; namely, that it was an indispensable prerequisite to the filling of an important and profitable agency, which Mr. J. Wright Boott had previously agreed to accept. But we have seen, that, immediately after that notice, he resigned the agency, for no other reason, apparently, than to avoid settling the accounts. [Ante, Ch. 33, 34.]

Mr. Kirk Boott urged a settlement, again, as a necessary step to the taking up of any useful occupation. The appeal was ineffectual; and Mr. J. Wright Boott never, afterwards, entered into any business whatever, from which a dollar was earned. [Ante, Ch. 34.]

5. The executor's account, which came at last, in 1844, came only because *some* account could no longer be avoided, as incident to a change of the trusteeship, then known to be inevitable. [Ante, Ch. 58, 59.]

Is this account then a *real* account, as it purports to be, and as Mr. Lowell says it is, of *all* the executor's receipts and payments during a period of nearly twenty-seven years, *without regard to the release he had from the heirs*, in 1833? [Ante, Ch. 21.]

I remarked, in the first place, on the singular facts apparent on its face. I pointed out the unusual brevity, and the suspicious generality, of its statements, such as I have never seen, before or since, in any paper purporting to be an executor's account, unless accompanied,—as this is not,—with separate schedules of particulars. [Ante, Ch. 17.]

I have shown that this account really claims a balance of \$25,000, as a *debt*, due from the estate to the executor,—not \$3700 only, as the "Reply" pretends,—and that, by the proceedings in the settlement with the new trustee, this sum was *actually paid, as a debt due to the executor*, out of the proceeds of a sale of real estate, belonging to Mrs. Boott for life, with remainder to all her children. [Ante, Ch. 18.]

The account admits a cash capital, received, originally, by the executor, to the amount of about \$186,000 only. I have shown that this limitation of the admitted capital is necessary, if the credits for payments are correct, to make out the alleged cash balance of \$25,000 due to the executor. I have further shown that, according to this statement of the original capital, and the other statements on both sides of the account, and the statement of property at its foot, it appears that Mr. Boott *had invested, and held in his capacity of executor, \$25,000, more than the estate*, after making the

payments credited, *had furnished for investment*; an absurdity, which, of itself, proves either a *material omission*, or a *want of reality* in *some one or more* of the statements. [Ante, Ch. 18.]

The account claims to have made a distribution to the heirs of \$90,000, in exactly equal shares of \$10,000 each. I have shown that, if *that* statement be true, the executor must have disregarded one of the plainest provisions of the will, and thereby defeated the minors of their right to *interest* on the original shares, during their minority. [Ante, Ch. 19.]

That there was, in truth, no such *equality* of payment, as the account pretends, I have shown particularly by my own case, and by the case of Mr. William Boott, compared with that of some other heirs; and I think I have shown that Mr. Lowell fails, upon a true construction of the will, to make out any right of the executor to charge to the estate the sum of \$10,000, as a payment of the patrimonial share of Mr. William Boott, (supposing his share to have been \$10,000 only,) since the sums, said to have been paid for him in Europe, during his minority, which make up, according to Mr. Lowell, the greater part of the \$10,000, were not justly chargeable to his patrimony under the provisions of that will. [Ante, Ch. 20.]

I have shown, by the "Reply" itself, that the account, upon its face, *admits* a deficiency of \$3700, in the amount held, at its date, for Mrs. Boott's annuity fund; and that it does not explain the *cause* of such a deficiency, otherwise than by *suggesting the probability of an over-distribution to the heirs*; which, if true, was a plain *misappropriation* of so much of the particular trust fund. [Ante, Ch. 18, 19.] I have further shown that this deficiency was finally made up to the fund, in a subsequent account, only by taking so much of the *annuitant's own money*, then in the executor's hands, and turning it into capital, without her consent, she being in England, and, at the time, ignorant of the fact, as, I believe, she still is. [Ante, Ch. 61.]

I have shown that a *further deficiency*, existing at the date of the account in this annuity fund, is, to the extent of

\$10,500, *covered up* by charging the stocks, on hand, at their alleged *cost to Mr. Boott*, at the time when he purchased and held them in his *own name*, subject to his own debts and engagements, instead of charging them according to their *true value*, at the time when he first converted those stocks into *trust* property, by causing them to be transferred to himself *as executor*, though still subject, in part, to his private pledges. [Ante, Ch. 27, 35.]

I have shown that there is *no pretence* of accounting for *two other particular annuity funds*, (the funds for the aunts,) amounting to \$11,000, unless *distribution of the capital* of these funds, among the heirs, is to be taken, by *mere implication*, as *part* of the \$90,000, alleged to have been distributed; and that if this were so, still, according to the statement of the account, the *income* of those funds, during the lives of the parties entitled to it, was *never paid to them*, nor to any body—unless it was paid to the *widow* of the testator, to whom it did *not* belong,—which I aver to be contrary to the fact, and which could not be true without entire disregard of plain duty by the executor. [Ante, Ch. 19, 43.]

I have further shown that the account covers up and conceals the fact, that \$66,000 of *trust money* had been taken, and used, by the executor, for the payment of the principal and interest of *his own private debts*; and that this concealment of the account is effected, first, by an omission; secondly, by a misstatement. The *omission* is of *two more* shares of manufacturing stock than the account speaks of;—shares, which, though pledged, were marked as property of the estate, in 1831, were transferred by me to the executor, in 1835, and were sold by the executor, in 1837, but are no where accounted for. The *misstatement* is, that *all the income*, received by the executor from the funds in his hands, during the whole period of the executorship, had been “*paid to, or for account and by order of, the widow;*” whereas, I have shown, chiefly by the admissions of the “*Reply*,” that, out of nearly \$170,000 of income received, after May, 1831, only about \$70,000 had, in fact, been *paid over to her*, or *directly for her use*, and *no orders from her*, respecting the

application of the residue, are produced or pretended; nor is any other *voucher*, for so large a sum, referred to, than a *general release of claims*, obtained from Mrs. Boott, by Mr. Lowell, *before* this, or any other account, had been even *stated*, and, of course, without notice to her of the charges, upon which her release was to operate. [Ante, Ch. 43, 44.]

Of the residue of this income I have shown that about \$34,000 had been used, mainly, for the *support of Mr. Boott*, in an establishment kept up in Boston, during Mrs. Boott's absence in England; but kept up, as I admit, with her knowledge, and therefore, perhaps, justly chargeable to her, without any special order. But I have also shown, that the remaining \$66,000 of this income was paid away, *in the discharge of Mr. Boott's private debts*; and that those appropriations of Mrs. Boott's income were made without her consent, or knowledge, at the time, and, as I believe, without her knowledge to the present day. [Ante, Ch. 43, 44.]

The proof, that I give, of these mis-appropriations of trust moneys, for the discharge of Mr. Boott's private debts, is the *admitted* fact that his debts *have been paid*, coupled with proof of the *amount* of his debts, and with proof that he had *no other means* of making the payments, to the extent above indicated.

This involves the difficulty, it is true, of establishing a negative proposition; namely, that Mr. Boott had *no other means*. But, by the aid of the admissions of the "Reply," I think this is satisfactorily made out; and the reader will need only a brief outline of the process, to see the necessity of the conclusion.

My general position is, that Mr. Boott was *really insolvent*, during the last fourteen years of his life; and that, after paying his other debts, he was unable, at any time within that period, to make good the deficiencies of his trust funds, even admitting to be true the statement of the account that he was bound to charge himself, in his capacity of executor, with no more than \$186,000 of cash capital, originally received. How does this appear?

I have shown that, in 1830, he made a partial disclosure to me of his pecuniary situation. I produce the evidence of it *in his own hand writing.* [Ante, Ch. 21.]

It appears, by the "Reply" itself, that he was at that time under embarrassment, in consequence of his connexion in business with the firm of Lyman & Ralston. [Ante, Ch. 22.] That connexion soon terminated; and it is distinctly admitted that he was in no business, afterwards, from which any thing was earned, even for his own support. [Ante, p. 242.] It is not pretended that he acquired any property, by inheritance or otherwise, *after* that date. Neither is it pretended that any considerable part of the \$90,000, charged in the account as distributed among the heirs, could have been paid to them *after* that date. It is, moreover, admitted, that there was no property of his father's estate standing, at that time, in his name *as executor, or trustee, or otherwise visibly distinguished as trust property.* [Ante, pp. 264-5.] It follows, of course, that, if we can ascertain all the property, which he then *possessed*, and its value, so long as he held it, and what *debts* he owed, we not only settle the point of his solvency or insolvency *at that date*, but,—since he neither gained nor lost any thing afterwards by new business, nor received any new accessions of property,—we settle it *for the rest of his life*, except so far as his liabilities may appear to have been assumed by *others*, or discharged by some *foreign* means. If we can, also, ascertain *what property he parted with*, and *when*, and *what it produced*, or what amount of debts it *paid*,—what liabilities were assumed and discharged by *other persons*,—what property he held, to the last, as *trust property*,—its changes of *value*,—what *income* he derived from it,—how much went into *current expense*, or payment to annuitants,—and *what debts he finally owed*,—it is manifest that we have the means, not only of determining his condition of solvency or insolvency, throughout the period, but, also, of determining *how much of the income*, from the *trust property* in his hands, was applied to the payment of *his own debts*.

Now all this I profess to have laid before the reader, with a degree of approximation to exactness, sufficient, at least, for a practical solution of every question material in the case.

I show, in the first place, Mr. Boott's written statement of *all the property he possessed*, in 1830, except what he considered himself as holding, specifically, for the accounts of the family of a deceased kinsman, namely, the late Mr. Francis Boott. [Ante, pp. 197-8.] That exception produces no embarrassment, because I am enabled to show, precisely, what it embraced. It appears, by record evidence, that all the "*shares*," mentioned in his memorandum, were shares in two manufacturing companies only, namely, the Merrimack and the Boston; the whole number of shares, he then held in each company, appears by its records; and transfers, afterwards made, either to himself as guardian and trustee of the family referred to, or directly to one of its members, are recorded, which, being deducted from the whole number previously standing in his name, leave a number corresponding with that in the memorandum, *within one share*. [B. App. pp. 30—33. Ante, p. 421.] This defines, sufficiently, the extent of the exceptions from the memorandum, so far as *these stocks* are concerned; and the probate accounts of Mr. Boott, as guardian, show what *other* property he held at that time *for his wards*, besides the uninvested cash balances due to them from himself. The "*Reply*," moreover, *admits*, in effect, that Mr. Boott was possessed of *no other property*, applicable to the payment of his debts, and to the security of the trusts under his father's will; or, at least, it admits that he was possessed of no other property, *known to Mr. Lowell*, than is named in the memorandum; and I have shown that the correctness of the memorandum, in its description of each particular item of property, is *also admitted*, in detail,—notwithstanding a general sneer at the authenticity of the memorandum, as dependent upon *my memory* for explanation. [Ante, Ch. 21.]

The memorandum, is thus shown, by a variety of evidence brought together, and entirely concordant, to be, substantially, a true schedule of *all the property* possessed by Mr. Boott, in

1830, belonging either to himself, or to his father's estate, or to the special trusts of his father's will. Out of that property is to be distinguished and set apart, if its aggregate may suffice for the purpose, so much as will represent and cover the funds, for which he was accountable, either as executor or trustee, under his father's will. As one of the heirs, he was entitled to retain his own share of that which he held as executor. As a particular devisee, he was the separate owner of the store in State-street. Of that which he held in trust for his mother, as well as of the mansion-house estate, he was also entitled, as one of the heirs, to an eventual *reversionary* share, to come into possession at his mother's death. So, in respect to the particular trust funds for the benefit of his aunts, living in 1830, he was entitled to a *reversionary* share, to accrue at their deaths respectively ; and if they were not then living, the capital had sunk into the residue of the estate, for which he was accountable to the other heirs, deducting his own share. The present value, in 1830, of these reversionary interests I have estimated. [Ante, Ch. 26.] But, since he died in the life-time of his mother, and never sold his reversionary interests, nor raised money upon them in any form, they, in truth, contributed nothing to the payment of his debts. And, since no new property was afterwards acquired, it follows, that, whatever payments he is shown to have made, after the date of the memorandum, must have been made from the property therein described, or from its issues and proceeds.

I next show, that the foot of the probate account of 1844 describes all the property *then* in Mr. Boott's *actual possession*. It all stood in his name as *executor*, and purported to be held by him in that capacity ; [Ante, Ch. 17.] and it is not pretended that he, at that time, owned any thing, himself, besides an interest, whatever it may have been, in the property so described, except a tomb, and certain chattels for his own personal use, mentioned in his will. [B. App. pp. 41-2.] Hence, by a comparison of the account of 1844 with the memorandum of 1830, we perceive what property had mean time been parted with ; and, by other unquestionable evidence, it has been shown at about what time each

parcel was disposed of, and what it produced. [Ante, Ch. 29, 30, 35, 42.]

Now that Mr. Boott was really insolvent, at the time of that memorandum, is demonstrated, I believe, beyond a doubt. All the property, mentioned in it, taken in gross, and without deducting pledges, amounted, at his own valuation, to \$213,000. But this, I have shown, was a great over-valuation. The market prices of the *stocks* have been proved. They are set down, in the memorandum, *at par*; but, they were worth, in the aggregate, at their market prices, about \$20,000 *less* than par. [Ante, Ch. 25.] Mr. Boott's interest in the *foundry*, set down at \$70,000, is shown, by the "Reply" itself, to have produced, soon after, only \$7624, in cash, or its equivalent, besides a transfer of certain reversionary interests,—from which nothing was ever realized by Mr. Boott, during his life,—and besides a general release from certain parties, to whom, according to the "Reply," nothing was in fact due, and whose demands, at any rate, I do not count, in the solution of the problem of solvency or insolvency. [Ante, Ch. 5, 35, 41, 42.] A *note*, valued in the memorandum at its face, viz; \$14,000, is shown, by what it produced, to have been really worth, in 1830, about \$10,000 only. [Ante, pp. 289—291.] A *stable*, set down at \$3000, was sold, many years after, for \$1500, producing nothing mean while. [Ante, p. 248.] The *store*, alone, produced *more* than it was valued at, by \$1000. [Ante, pp. 200—201.] Hence, the total assets of the memorandum, at their then marketable value, (excepting the value of reversions received in exchange for the foundry, which is reckoned below,) are found not to have much exceeded \$126,000. To this, we have only to add the available value of these reversionary interests, which afterwards came to Mr. Boott as part of the proceeds of a sale of his interest in the foundry, and the value of the reversionary interest which Mr. Boott previously owned, and we shall have arrived at the sum total of his means of paying debts, and securing trusts. These reversionary interests were partly in the mansion-house, and partly in Mrs.

Boott's annuity fund. They represented three-ninths in each, subject to the life-interest of Mrs. Boott. Three-ninths of the mansion-house, *in reversion*, are shown to have added less than \$5000 of *present value* to the assets of the memorandum; and three-ninths, in reversion, of the *annuity fund* are shown to have been worth *nothing*, as property, to Mr. Boott, because the fund is proved to have been deficient by more than one third, and Mr. Boott was bound to pay the heirs of the other two thirds *in full*, before he could claim any thing for himself. [Ante, p. 353.] The real saleable value, therefore, of all he possessed, was only about \$131,000; and, of this, \$50'0, lying in reversion, was never in fact sold, nor otherwise applied to the liquidation of debts.

On the other hand, it is admitted, by the "Reply," that Mr. Boott was bound, at that time, to show, for his mother's annuity fund, property to the amount of - - - \$100,000 And debts to other persons are distinctly admitted,

[Ante, p. 206,]	which amount to
	- - - 101,000
	<hr/> 201,000

The trust for his two aunts is neither admitted, nor denied, to have been an outstanding trust.

The fund, required for it by the will, was	- 11,000
The balance of the guardianship debt I have proved	
[Ante, Ch. 24.] to have been larger than the	
"Reply" admits, by - - - - -	26,000
And I think I have proved, notwithstanding the denial of the "Reply," that there were at that time other debts, for which Mr. Boott was liable, jointly with Messrs. Lyman and Ralston,	
[Ante, Ch. 22, 23.] amounting, probably, to -	50,000
	<hr/> 288,000

We may reject, from this amount of liability, every thing which is not distinctly admitted, and we may deduct, from the annuity fund, the share which Mr. Boott owned in reversion, in 1830, and even the additional shares in reversion, which he subsequently acquired as part of the price of his

interest in the foundry, and, after all such allowances, the condition, in which Mr. Boott is left, will still be a state of plain insolvency.

To obviate the plausible objection that so great an amount of indebtedness could not have been got rid of by so small an amount of assets, I have traced the disposition of the property, and the gradual liquidation of debt, downward, and have shown by what contribution from other sources, and by what other means, an apparent extinction of the debt was finally effected. [Ante, Ch. 25, 28, 29, 35, 41, 42, 43, 18.]

I have shown that there was some rise in value of the property; that Messrs. Lyman and Ralston, owing jointly with Mr. Boott a portion of the debts, assumed, and finally paid, that portion; that property yielding a great income was not sold, but retained as trust property; that a portion of this large income from trust property was applied to the gradual payment of debt; that a small portion of the principal was also so applied; and that the balance of the debt, left at the end of fourteen years, was charged, directly, against the estate, and was paid by the estate, under the fictitious account of 1844.

To recount the leading particulars, I have shown that, in May, 1831, the property, mentioned in the memorandum of 1830, with the exception of certain items, was either put in trust, or marked as trust property, to secure whatever was due from Mr. Boott to his father's estate, and whatever was due to his wards upon a personal debt, for which his father's estate was liable as surety. I have shown that the stocks had then risen in value, compared with their market price, in August, 1830. But I have shown, also, that, estimating the stocks with this increased value, the whole property, so put in trust, subject to certain debts of Mr. Boott, for which it was pledged, and after providing for the guardianship debt, for which it was also bound, would have left, at that date, no more than \$32,000 of saleable value, to represent all the outstanding special trusts of the will. The fund, originally set apart by the executor for those trusts, is shown to have

been nearly \$117,000. The sum, positively required for those trusts by the will, was \$111,000. No distribution of any part of it had been made, to the knowledge of the heirs. But, at any rate, the "Reply" admits that \$100,000 was due to the fund for Mrs. Boott, and the apparent deficiency, in that fund alone, amounted to \$68,000. [Ante, Ch. 29.]

The only property of the memorandum, not put in trust, or marked as trust property, was Mr. Boott's store, and his interest in the foundry. Now his store, in May, 1831, had been already sold, and I apply its proceeds to the reduction of his debts. [Ante, pp. 283, 353.]

I next show, that, in September, 1831, Mr. Boott came to a settlement with his partners, Messrs. Lyman and Ralston, whereby they assumed all the debts of that concern, taking his share of the foundry at a valuation, and that they paid to Mr. Boott only \$7624 for his investment there, in addition to the value, whatever it may have been, of the reversionary interests of their wives in the mansion-house and the trust funds, which were assigned to Mr. Boott, and in addition to the value of a release of all their claims on him, as executor, for whatever he may have owed them, in that capacity, beyond the \$10,000 each, which they had previously received. This settlement took off \$70,000 of the nominal assets, mentioned in the memorandum of 1830; but it also wiped off \$80,000 of the liabilities, included in the foregoing estimate, and it furnished \$7624, applicable to the payment of other debts, thus bettering Mr. Boott's condition by nearly \$18,000. But there was, still, a deficiency of trust property,—after providing for the guardianship debt, and paying off the particular pledges,—which left Mrs. Boott's annuity fund defective by more than one half; and, if the \$11,000 fund for the aunts is reckoned as an outstanding trust, for which Mr. Boott was then accountable, the total deficiency, in the special trust funds, amounted to \$62,000. [Ante, Ch. 35.]

A voluntary release from the heirs, in 1833, discharged Mr. Boott from his liability to them, as executor, for any moneys *at that time due and payable*. This did not touch the \$100,000

fund, not payable during the life of Mrs. Boott ; nor so much of the \$11,000 fund as had not then become payable by the death of the annuitants. [Ante, Ch. 37, 41.]

I next show, that a settlement of the guardianship accounts occurred, in 1835. There had been, in the mean time, an accumulation of four years income on the trust property, held by the executor, beyond the allowance made to Mrs. Boott for her own consumption. And it was made to appear, that, after applying that surplus to the payment of Mr. Boott's debts, together with the proceeds of every item of property, he had sold, yielding any thing applicable to the payment of debt, all the remaining property, subject to its pledges, was, still, insufficient to make good Mrs. Boott's annuity fund by \$35,000, valuing the property according to the prices of the time when it first, ostensibly, became trust property ; or, if it be taken at the valuation of the probate account of 1844, there was, still, a deficiency of \$25,000 in the annuity fund. And it is made plain that the reduction of the apparent deficiency, between 1831 and 1835, can not be accounted for, except by applying a portion of the income of the trust fund to the payment of Mr. Boott's private debts. [Ante, Ch. 42, 43.]

I have shown, besides, that, after the payment of this guardianship debt, the debt due from Mr. Boott to Mr. Lowell stood at \$46,000, at least, probably more ; and that I have applied to the payment of the guardianship debt all the property in Mr. Boott's hands, except that which is stated, in the probate account of 1844, as still held by him in his capacity of executor. That is to say, the case is reduced, in 1835, to this :—Mr. Boott held *no* property, in immediate possession, *except as executor*, and he owed a debt of \$46,000 to Mr. Lowell. But, in 1844, his debt to Mr. Lowell is found to be only \$25,000. Interest upon the debt of \$46,000 had been kept down, and the principal had been reduced by \$21,000. These payments *must* have been made by means of the trust property ; for there was *no other property* held by Mr. Boott, in 1835. But, with the exception of certain items afterwards sold, which I have applied by anticipation

to the guardianship debt, the executor's *capital* remained, in 1844, as it was in 1835. It follows, of course, that the payments of principal and interest, made to Mr. Lowell, had been made out of the *income* of the property, abovementioned as held in trust. [Ante, Ch. 42, 43.]

I have gone a step further:—Laying aside all the disputed liability for debts of Lyman & Ralston,—subsequently assumed by Mr. Lyman and Mr. Ralston, in their partnership settlement with Mr. Boott,—I have taken an account of the *other debts*, admitted to have been *paid by Mr. Boott*, and of the interest upon them, after 1831, to the times of their respective payments, and I have deducted the *actual proved receipts* of Mr. Boott, derived from *all the assets* of 1830, *except what remained unsold*, according to the account of 1844; and I have thereby demonstrated, that nearly \$66,000 of the *income* from the stocks, held by the executor at the date of the probate account, had gone, during those thirteen years, from 1831 to 1844, to the payment of his debts. I have confirmed this by showing, from authentic sources, what the total cash receipts of Mr. Boott, as executor, were, from 1831 to the date of the account, and by showing, from the “Reply,” what payments were made by him, as executor, for the account of Mrs. Boott, after she went to England, in 1836. I have added to this a reasonable allowance, founded upon my own observation, for Mrs. Boott's expenditures at home, from 1831 to 1836; and the result is, that, after deducting all payments, made by Mr. Boott in his capacity of executor, from all his receipts as executor, within that period, there remains a balance of about \$66,000 of receipts, totally unaccounted for, unless by the payment of his own debts. [Ante, Ch. 43.]

Finally, I have shown that the account of 1844 makes out its apparent balance of \$25,000 due to the executor:—1. By charging this \$66,000, which had gone to the payment of private debts, as *paid over to the widow*;—2. By charging the stocks on hand *at a higher price than their market value*, when they were turned over to the trust account, in 1831;—3. By admitting only about \$186,000 of moneyed capital to have

been received by the executor from his father's estate, and, by claiming that \$90,000 of that capital had been paid to the heirs. 4. I have shown that the apparent balance, thus claimed for the executor, as due to him, corresponds, almost exactly, with the balance of debt *then due from Mr. Boott to Mr. Lowell*; and that this alleged debt of \$25,000, claimed for the executor by the account of 1844, was *paid by the estate* to Mr. Boott from the proceeds of a sale of the mansion-house, and that the sum, so received, passed, through the name of Mr. Boott, *directly to Mr. Lowell*, for the payment of Mr. Boott's remaining debt to him. [Ante, Ch. 42, 43, 31, 37, 38, 18.]

Having thus shown the falsehood of the account, and the evidence of mismanagement,—even upon the assumption that \$186,000, only, of moneyed capital had been originally received by the executor, and that \$90,000 of that capital had been distributed among the heirs, in equal shares of \$10,000 each,—I proceeded to show that these statements were, both, wide of the truth; that *much more* was in fact *received*, and that *more*, also, was in fact *paid to some* of the heirs.

For this purpose, I relied on Mr. Boott's own representation to me, in 1821, that \$20,000, probably,—from \$17,000 to \$18,000, certainly,—was about to be paid to each heir, without disturbing the special trust funds, as soon as certain matters, outstanding in England, could be brought to a close; and I proved the reality of the fact, that such a representation was made to me, (since it was questioned in the "Reply,") by a contemporaneous letter from myself to my father, found among his papers, and communicating to him my expectation of the more limited amount above-mentioned, in consequence of the statement, therein referred to, as recently made to me by Mr. Boott. I referred to verbal declarations, made to me by other heirs, of like representations made to them by Mr. Boott; and I confirmed the fact by a letter from Mr. Kirk Boott, in 1826, (that is, after payment of \$10,000 each had been made to Mr. Lyman, Mr. Ralston, and myself,) stating that Mr. J. Wright Boott was preparing "*to pay over the balances*," and indicating his belief that my

share would be large enough to authorize my making a loan to him of \$8000. [Ante, Ch. 45, 50.]

If these representations of Mr. J. Wright Boott were true, it appears that the whole moneyed capital, which he had received as executor, must have been somewhere from \$264,000 to \$291,000, instead of \$186,000, only, as is stated in the account of 1844. That is to say, there must have been, in the first place, for the several annuity funds, \$111,000, and, in the next, for the nine heirs, \$180,000,—if we estimate a share at the maximum rate of \$20,000,—or \$153,000,—if we estimate a share at the minimum rate of \$17,000.

In proof that these representations of Mr. J. Wright Boott were substantially true, I have shown:—

1. That the testator directed the speedy formation of special annuity funds to the amount of \$111,000, and the *immediate* payment, to two of his sons, of \$10,000 each, *on account* of their shares in the *remaining* personal estate. This sum was to be drawn out, by each of these sons, before the final balance of a residuary share could possibly be ascertained by a full settlement of the estate; and, consequently, such a provision, by a testator eminently cautious, indicates, at least, his own expectation of a considerable surplus to be divided, beyond the \$10,000 each, which he authorized the sons to take at once. [Ante, Ch. 45.]

2. That \$10,000 each was paid, in 1821–2, to Mr. Lyman, Mr. Ralston, and myself, *expressly on account*, and that receipts were given in conformity, which Mr. Lowell must possess, but does not produce. [Ante, Ch. 46, 47.]

3. The intention of further payments of not less than \$8000, each, to the same parties, is proved by Mr. Kirk Boott's letter of 1826; and, by his letters of 1830 and 1831, it is proved that Messrs. Lyman and Ralston, at that time, asserted their respective claims on the executor for expected balances, and that the justice of their claims was not denied by him. [Ante, Ch. 28, 47, 50.]

4. The deed of Messrs. Lyman and Ralston, given in the settlement of their partnership concerns with Mr. Boott, in September, 1831, expressly assigns to him, as part of the

settlement, their *claims on him as executor, for dues then payable*, as well as the future reversionary interests of their wives, notwithstanding that \$10,000, each, had been previously paid to them. [Ante, Ch. 47.]

5. The *reversionary* shares of their wives in the mansion-house, and in the admitted special trust fund of their mother, are shown to have been worth, in 1831, not more, certainly, than \$15,000 a share, and it appears, by the "Reply," that their *whole* outstanding shares in the estate, *present and reversionary*, were estimated in the settlement above spoken of at \$25,000 each, notwithstanding that \$10,000, each, had been received by Messrs. Lyman and Ralston long before. [Ante, Ch. 49.]

If there is no mistake in this latter statement of the "Reply," or in my apprehension of it, it proves, conclusively, that \$20,000 apiece, instead of \$10,000, was *actually allowed*, as a share, to Mr. Lyman and to Mr. Ralston, in settlement of their claims against the executor, independently of their *reversionary* rights; and that it was allowed by *Mr. Lowell*, though paid only by a corresponding over-valuation of the foundry.

In further confirmation of the truth of Mr. J. Wright Boott's representations, in 1821-2, I have shown a probability, at least, that like payments, or allowances, had been made to several other heirs. It appears that Mr. James Boott actually held \$20,000 of property, in 1826; and there is no known source, whence it could have come to him, except his share of the estate. Mr. Wells, also, appears to have received about \$20,000, less the advancements charged against him by the testator. Dr. Francis Boott, I always understood, had received a like sum, although I am unable to prove the fact. I have shown that Mr. Kirk Boott certainly received *whatever was due to him*, through a partnership settlement, in 1826, and that certain advances, previously made for him by Mr. J. Wright Boott, were *sufficient to cover* an allowance of \$20,000, in that settlement, for his share of the estate. I have also shown, in answer to one objection of the "Reply," that the probable results of his Chelmsford speculation

were sufficient to enable Mr. Kirk Boott to pay the balance due to his brother, deducting an allowance of \$20,000 for his share of the estate, and yet to leave for him that whole residue of property, which Mr. Lowell asserts that he possessed after the settlement of 1826. [Ante, Ch. 50, 55.]

The probability seems to be, from all the evidence produced, that most of the heirs were allowed to receive, in some form, the nominal equivalent of \$20,000 each, though Mrs. Brooks and Mr. William Boott certainly did not; and it was, probably, to avoid the disclosure of unequal distributions, and of balances still due to some of the heirs, that payments to other heirs, beyond the sum of \$10,000 each, are not credited in the account. The omission, on one side of the account, of payments and distributions, actually made to some of the heirs, would, necessarily, involve an omission, on the other side of the account, of a corresponding amount in the capital received; otherwise, the account could not terminate, as it does, with an apparent balance, due to the executor, sufficient to pay his debt to Mr. Lowell.

From the foregoing premises, I infer that the account should have charged the executor with nearly \$100,000 more of capital originally received, and should have credited him with about \$70,000 more of capital distributed, unequally, to some of the heirs, and not to others.

In confirmation of this view, I have shown that the "Reply" *admits losses* of capital, belonging *either* to Mr. Boott, or to his father's estate, to the amount of from \$140,000 to \$150,000. It is true, that of the capital, so lost, the greater part is said, in the "Reply," to have been *Mr. Boott's private fortune*; and so much of it, as is admitted to have been the property of *the estate*, is said to have been inevitably lost, without fault of the executor, by the course of events in the winding up of the business of the first house, named, "Kirk Boott & Sons." [Ante, Ch. 52.]

These allegations led me to examine the specified *causes* of loss, and to go somewhat into the history of the several mercantile houses, of which Mr. J. Wright Boott was a member. Without recapitulating minutely, I may remind

the reader, that, *before* the formation of the house of "Kirk Boott & Son," Mr. Boott, senior, is admitted to have been a man of handsome fortune, while Mr. J. Wright Boott was a minor without property. I have shown that, during the whole period of his copartnership with his father, there were *but three years*, during which the trade with Great Britain, in which they were engaged, was politically open ; and that the terms of the copartnership allowed to his father five per cent. for the use of his capital, before any division of profits was to be made between them ; and that profits, when earned, beyond that rate of interest, were divided in the proportion of one fourth, only, to the son, and three fourths to the father. Hence, I have demonstrated the absurdity of Mr. Lowell's allegation that Mr. J. Wright Boott was worth, at his father's death, \$70,000, besides his inheritance, unless the father's estate, and, consequently, the executor's accountability, should be admitted to have been vastly larger than any hypothesis of mine demands. I have shown, on the contrary, that Mr. J. Wright Boott's opportunities did not permit him to have acquired any very large property, previous to his father's death, and that Mr. Lowell fails, utterly, to point out *any specific property, or any amount of capital not borrowed*, possessed by Mr. Boott within a few years after his father's death, except that which he derived under his father's will. [Ante, Ch. 51 to 55.]

I have shown that most of the alleged causes of loss, in the winding up of the business of the house in which the father was a partner, would have pressed less upon *that* house than upon the current business and final liquidation of the *second* house of "Kirk Boott & Sons,"—formed by three of the sons after the death of their father,—and that the business of this latter house is declared by Mr. Kirk Boott to have been a very losing one. I infer, from the marked silence of the "Reply," that the business of the later firm of Boott & Lowell was, also, productive of some loss to Mr. Boott. I show, that, during the existence of these houses, Mr. Boott entered into large speculations, and came under heavy advances, quite beyond any means of his own, to

some, or to one at least, of his brothers. I show a probability, at least, that the capital of the estate was permitted by the executor to pass into the business of these several mercantile houses, and to furnish these advances to his brothers, and that the losses, both of principal and interest, whatever they may have been, fell, by necessity, upon that capital, for which the executor had thus made himself personally responsible. I show a high probability that Mr. Boott would have been found worth *nothing*, after liquidating his debts, had he brought his accounts to a settlement, all round, at the time he went into the business of the foundry, in 1826 ; and, consequently, that the capital, employed by him, in that business, was really capital belonging to the estate. It is clear that he sunk in that business nearly \$70,000 of available capital ; and, not counting, as property, reversionary shares of a trust fund, which he was unable to make good to the other parties interested in it, my belief is, that his total loss of active means, in that concern, was, eventually, including interest, about \$100,000. The loss, whatever it was, must have fallen upon capital, or upon the income from capital, belonging to his father's estate. [Ante, Ch. 54, 55.]

Finally, I have shown, as a consequence of all this mismanagement; that the ascertained losses of parties, interested under the will of Mr. Boott, senior, probably amounted, without reckoning interest on the principal sums, to much more than \$100,000. These losses constituted a just claim, in favour of those parties, against the executor, for that amount, except so far as it had been discharged by the voluntary releases of 1833 ; and, after giving full effect to those releases, Mr. J. Wright Boott was, still, a large debtor to some of the parties interested under the will, at the time of the stating of a probate account, with an apparent balance of \$25,000 due to himself, which account the "Reply" asserts to be a true account of *all* the executor's receipts and payments, *without* regard to the effect of the former releases. [Ante, Ch. 56.]

I trust; therefore, that I have fully maintained my first proposition, in both its branches ; namely, that there had

been great mismanagement by the executor, resulting in loss ; and that the account, cited by Mr. Lowell as proof to the contrary, was, essentially, a fictitious account.

But believing, as I do, that Mr. Boott was insane upon every subject connected with his family relations,—including the principles of just accountability for the family property committed to his care,—I should do great injustice to his memory, if I permitted the responsibility of that account to rest, wholly, or mainly, upon him ; and my answer, in a personal controversy of this nature,—following a publication so extremely insolent, and so utterly unfounded in truth, as the “Reply,”—would be very incomplete, if I did not show that Mr. Lowell, at the time of that publication, knew, even better than I, the general fact of mismanagement and loss, and that he perfectly well knew the fictitious character of the account, drawn up by himself.

Did he, or did he not, know the general fact of mismanagement by the executor, and of great loss resulting from it?

For me, his own admissions, in private conversations, before this controversy arose, are evidence enough. But those I cannot prove otherwise than by my own statements, which he may deny, *valeat quantum*. I have pointed out the fact, however, that some of his statements on this subject were repeated, on my authority, soon after they were made, in a letter from Mrs. Brooks to Mrs. Boott ; that this letter was sent, soon after, by Mrs. Boott to Mr. Lowell ; and that he has never ventured, from that day to this, to deny the truth of my report of his conversations, by any communication made known to me. [Ante, Ch. 58.]

But let us see what has been, more positively, *proved*, concerning his *means* of knowing the executor’s course of management.

It appears, chiefly by his own showing, that he was a *clerk* in the *first* house of Kirk Boott & Sons, from June, 1815, until March, 1818, when that house terminated, agreeably to the directions of the will of Mr. Boott, senior, who died in January, 1817 ;—[L. p. 23.] that he was a *clerk* in the *second* house of Kirk Boott & Sons, for about one year, ending

in March, 1819 ;—[L. pp. 23—5.] that he *formed a partnership* with Mr. J. Wright Boott, under the firm of Boott & Lowell, the successors of the second house of Kirk Boott & Sons, which partnership continued from January 1, 1822, to July 1, 1824 ;—[L. pp. 27—8.] that, during about one year of that period, he was the *private agent* for his partner, then absent in Europe, and attended, among other things, to the *family accounts* ;—[L. pp. 28, 69.] that he was one of the *advisers* of Mr. Boott, during his difficulties in 1830 and 1831, and *effected the settlement with his partners in the house of Lyman & Ralston* ;—[L. p. 79.] that he was, himself, at that time, the *largest*, and, finally, the *sole, creditor* of Mr. Boott, by reason of large sums of money lent upon collateral security, and that he thereby became the *actual holder*, as pledgee, of the *greater part of the property* disclosed by the account of 1844, and that he continued to hold it up to the time of that account. [L. pp. 87, 97, 41, 42.] He appears, in 1835, as the principal counsellor and assistant of Mr. Boott, about the settlement of his *guardianship* accounts. [L. pp. 80, 81.] He appears, again, in 1844, as Mr. Boott's man of business, and negotiator, in the preparing and final settlement of the *executor's account*. [Ante, Ch. 58 to 61.] He testified at the inquest, according to the official report, that “Deceased was in the *habit* of consulting with witness, about his affairs, *more than any one else.*” [B. App. p. 58.] He became the *executor* of the deceased, and, thereby, came into possession of *all his books and papers*, in addition to those of Boott & Lowell, which he held as surviving partner. [B. App. p. 71.]

The “Reply” further admits, that, about the time of the death of Mr. Boott, senior, Mr. Lowell was conversant with the provisions of his will ; for we are told that the general residuary property of the heirs, beyond the special trust funds, and the particular legacies and devises, was a subject of conversation and estimate among the clerks. [L. pp. 25, 26.] According to Mr. Lowell's unfortified report of the estimates of the clerks, they did not range above \$16,000 or \$17,000 to a share, besides reversionary interests, and even finally settled at about \$15,000. [L. pp. 52, 26.] This, however, rests

on his own reminiscence ; and he, alone, by his own report, appears to have brought down the estimate, at a later period, to \$10,000, or less, [L. p. 27.] in consequence of supposed causes of loss, which I think I have shown could not have had the operation attributed to them, and which, if I am right, Mr. Lowell could not have supposed them to have at the time of their occurrence. [Ante, Ch. 54.]

I think it sufficiently appears, that Mr. Boott was not in the habit of keeping books of account, *separately* from the books of the mercantile houses, with which he was connected ; that his cash dealings, as executor or otherwise, were effected through those houses, and were recorded in their books ; and consequently, that, during the period of the existence of the house of Boott & Lowell, Mr. Lowell, as the accountant of that house, must have been at least as well acquainted with them as Mr. Boott himself. In fact, the books of that house are expressly cited by Mr. Lowell, to prove certain receipts and payments of Mr. Boott, as executor, and as guardian. [L. p. 69.]

Considering these general means of knowledge, if any man knew whether Mr. Boott was managing the business of his father's estate properly, or improperly, Mr. Lowell was that man ; and, accordingly, he himself declares, in one of his letters to Dr. Boott, written in the life time of Mr. J. Wright Boott, "I do know *much,—more*, perhaps, than *any other* person,—of the history of this property, and its management." [L. p. 165. Ante, pp. 700, 701.]

Let us look, then, to the evidence of certain *particular facts*, which, having such ample means of knowledge, it would seem, he could not but have known.

I have proved that the principal operations of Mr. Boott, in the buying and selling of stocks, and the chief calls for money for his large investment in the Chelmsford speculation, and in the companies which grew out of it, and for the advances made in the same business to his brothers, occurred during the period of the house of Boott & Lowell. [Ante, Ch. 51.] Is it possible that Mr. Lowell, his partner, should have been totally ignorant of those transactions ? Must he

not have known that the estate of Mr. Boott, senior, was still unsettled? Did he not see that the funds, employed in trade and in those speculations, together, were greatly beyond any *private fortune*, which, he now says, he supposed Mr. Boott to possess? Whence did he imagine these large funds to have come?

We have proof, by his own admission, that he knew Mr. Boott's habit of holding his trust funds, uninvested, ostensibly, as executor or trustee, and that they stood *undistinguished from his own*; for, he says, he condemned the practice as unjustifiable, and remonstrated with Mr. Boott against it. [L. pp. 35, 88. Ante, Ch. 27.] But, I have proved that the trust fund of 1818,—the most of it, at least,—was, at first, properly invested in the name of “J. W. Boott, *executor*;” that stocks, so held in trust as executor, were afterwards sold; that the proceeds were not invested as *executor*, but were treated like *private funds*, and, when reinvested, came out as investments *in the private name of Mr. Boott*; and I have also proved that this change, in Mr. Boott's course of dealing with his trust funds, occurred during his connexion in business with Mr. Lowell, and while his accounts were kept, as it seems, in the books of Boott & Lowell. [Ante, Ch. 27.] Not only so, but it is distinctly proved that Mr. Lowell, himself, accepted transfers, from the executor to Boott & Lowell, of stocks so held, to a large amount, and afterwards himself *sold* those stocks, during his partner's absence in Europe, and that no equivalent appears to have been placed by him in the name of *the executor*; nor have we, to this day, any account of the manner, in which the proceeds were disposed of. [Ante, Ch. 27, 56, 63.] Yet, in these transactions, Mr. Lowell was, clearly, an active participator.

He knew, or ought to have known, in 1827 and 1830,—for I have proved that he had the means of knowledge in his own hands,—that stocks, then pledged to him by Mr. Boott, though standing in his own name, were not, in truth, his own property, but that *some portion of them, if not all*, were stocks which represented *trust funds*, for which Mr. Boott was accountable, and that they could not be bound

for Mr. Boott's private debts, without being taken from the trusts, to which they belonged in fact, though not in form. [Ante, Ch. 39.] Yet, Mr. Lowell accepted transfers of those stocks, in pledge to himself, as security for Mr. Boott's private debt.

He knew of the Chelmsford speculation, of course, and of the large amount of funds it had taken up; and he knew, also, of the iron foundry speculation, entered upon in 1826, and terminated in 1831, and of the embarrassments, under which Mr. Boott laboured in consequence; for he himself acted for Mr. Boott, as he avers, in the settlement made with Messrs. Lyman and Ralston. [L. p. 109.] He knew, and states, that funds were invested there by Mr. Boott to the amount of \$70,000, at least, and that, from these funds, only \$7624 ever came back, in the shape of active means, suitable for the payment of debts. [L. pp. 90, 79.] He could not but have known, in the course of the negotiations, the claims of both Lyman and Ralston to further dues from the executor, beyond the \$10,000 each, which they had previously received; and, although he says that he insisted that the \$10,000, already paid, was an over-payment, [L. p. 54.] it appears, I think, with sufficient distinctness, that he in fact allowed them, in that settlement, and nominally paid to them by the assignment of Mr. Boott's interest in the foundry, an additional \$10,000 each, as due to them from the executor. [Ante, Ch. 49.] Is it credible, then, that he should not have known, at that period, the positively *insolvent condition* of Mr. Boott? or that he should not have known that other like balances were due to *other heirs*?

He knew that all the property, which was *marked as trust property*, in May, 1831, subject to pledges, with which he was well acquainted, and subject to the reputed balance of the guardianship debt, was *greatly insufficient to make good the particular trust funds*, called for by the will. [Ante, Ch. 29, 30, 31.]

He knew that the shares, afterwards transferred to him by Mr. Sturgis as security for new advances made to Mr. Boott, were a *part of the property so marked for the estate*; yet he

received them in pledge for the private debt of Mr. Boott, and never gave me notice that he had taken them, though he informed me, a long time after, that the debt to Mr. Sturgis had been *paid*. [Ante, Ch. 36.]

He knew that Mr. Boott never afterwards acquired new property, and that nothing could have been paid by him to any heir, *to make a balance in his favour*, after the period of known insolvency, and of visible inability to make good even the special trust funds. [L. p. 91.]

He knew, extremely well, that Mr. Boott was gradually paying off his debts out of the *income of the trust property*, because *he himself was the holder* of more than one half of the property, *the personal recipient of the dividends*, which accrued upon it, *and the holder, also, of the debt, which was paid off*, in great part, by those dividends, besides his general knowledge of the fact that Mr. Boott was possessed of no other means of paying his debts, except this trust property, which was pledged for them. [Ante, Ch. 43.]

Now, if Mr. Lowell knew all, or most, of these particular facts, at the time of their occurrence, or afterwards, and had the means of knowledge, which are above shown, concerning Mr. Boott's business habits and affairs, generally, I ask whether he did not, necessarily, know the *main* fact, that there had been *great mismanagement* by Mr. Boott, in his capacity of executor, and that more or less of *loss* had arisen from it, to parties interested in the due performance of his trusts? Did he not *certainly* know this, *when he had himself received large sums out of the income of the trust property, in discharge of Mr. Boott's private debts to him?* Did he not know it all, *at the time of the publication of his "Reply,"* after my former statement had put him on inquiry, with all the *means* of knowledge in his own hands?

It is hardly necessary to ask, after the evidence of knowledge in the other matters above stated, whether he did not know the *fictitious character of the account*, at the time when he appealed to it as "*a triumphant vindication of Mr. Boott.*" If I have proved the account to be essentially erroneous,—as no man, who has attended to the evidence, can doubt,—how

could Mr. Lowell have failed to know the fact? Have I not proved that he was the *author* of that account?—that it was made by him, not from materials and information *proceeding from Mr. Boott*, but, in all it contained of new, or useful, information to the heirs, from materials furnished *by him to Mr. Boott*, out of the books of Boott & Lowell? So far is the account from being, substantially, the work of Mr. Boott, that I have proved, by Mr. Lowell's own statement to a disinterested witness, that *Mr. Boott refused, at first, to adopt it*. By his statement to me, if my report of it may be received as evidence of the fact, Mr. Boott persisted in the refusal for nearly six months. Who induced him, finally, to adopt it, but Mr. Lowell? [Ante, Ch. 58, 59.]

Did he not know the agency of *Boott & Lowell*, in large transactions concerning the estate, and the use made of its funds, at that period, which this account does *not disclose*? Did he not know that it could not be true, as the account, by necessary implication, asserts, that *nothing* was collected from the assets of the first house of Kirk Boott & Sons, during the *four years* of the existence of the second house of that name, which was the appointed liquidator of the former house? Did he not know that between *sixty and seventy thousand dollars*, in principal and interest, of Mr. Boott's debts had been paid, he himself receiving the most of it, *out of the income of the trust fund*, and that this was *not* "by order of the widow," and that the statement of the account, in that particular, was positively false? Did he not know that the apparent balance of the account, in the executor's favour, was made, wholly, out of that misappropriation, and that, otherwise, the account must have stood with a large balance *against* him, by subjecting the *principal* of the trust fund to the debts, for which it was in fact pledged?

Yet, it was Mr. Lowell, who held forth *this*, as a *true account*, to ignorant heirs, relying implicitly on his assurances, and on his better means of knowledge. It was he, who obtained from parties in England prospective releases, adequate to pass, so far as their interests were concerned, *any account* that might be presented; and he it was, who applied those

releases to the passage of *this* account. [Ante, Ch. 58, 60.] It was he, who obtained, from those of the heirs, here, who disbelieved, or distrusted, so remarkable an account, their assent to its allowance, on condition that Mr. Boott should resign his trust. [Ante, Ch. 16, 60.] It was those releases, from parties who knew nothing of the facts, and this compromise, with parties who knew little of them compared with himself, which superseded, and dispensed with, all proof or inquiry respecting the account, and respecting matters behind the account. One obstacle only remained to its passage, and that was the want of a release from *me*, in my capacity of *trustee*, which I positively refused to give ; but that was got over by the signing, for me and in my name, by Mr. Lowell, of a legal instrument, which I had positively refused to sign for myself *in that capacity*, and by presenting the paper, so signed, to the probate court, *as evidence that I freely assented in that capacity*, as well as in respect to my private interest, to an *absolute release of all claims* on the executor. [Ante, Ch. 60.] And it is Mr. Lowell, who cites *such* an account, *so made, and so passed*, as evidence that I had *falsely accused* Mr. Boott of *mismanaging his trusts* ; and he it is, who has published the extraordinary statements concerning it, which have now been exposed, as part of an argument, to prove that *gross misconduct on my part* occasioned the *death* of Mr. Boott !

If I have succeeded in establishing my second proposition,—that Mr. Lowell knew of the mismanagement when he accused me of making false charges to that effect, and that he knew of the imperfection and substantial incorrectness of the account, prepared by himself, when he cited it as proof that my charges were false,—what can be said or thought of his “Reply,” put forth, as it is, in a tone of confident authority, which, if its pages were not before us, would surpass belief ?

Indeed, the character of that publication, taken from beginning to end, in connexion with the facts now proved, and with the proof of Mr. Lowell’s knowledge concerning them, is, to my mind, more fatal than a confession. What man,

under such circumstances, could so have written, with the honest purpose either of establishing a truth, or of vindicating a deceased friend?

That the general purpose of the "Reply" is not to establish a truth, but the reverse, and not to vindicate others, but to screen its author, is apparent enough from the foregoing review of the substance of the argument. But, when we come to analyze the means, employed to give popular effect to the imposition, one scarcely knows how to point out, in a brief recapitulation, the manifold instances, exposed in the preceding pages, of particular deceptions, various in kind and degree, but all contributing more or less to a structure of fiction.

Shall I call to mind some of the many fallacious expedients for diverting attention from the true issues, and exciting unfounded prejudices, by which the reader of the "Reply" has been led off upon new and immaterial subjects of inquiry, presented to him as if they were of the last importance?

I do not mean to speak of mere *arts of style*, which may tend to deceive some readers; but I may refer, for a more substantial example, to the bold pretence that there is *no real controversy between me and Mr. Lowell*, and that I only feign one, in order to make *him* a convenient *cover* for renewing the discussion of an old quarrel with a party deceased, whose memory I am charged with reviling, and seeking to revile in this form; while the plain truth is, that I simply defend myself against attacks from Mr. Lowell, made in a shape, which inevitably compels me, if I defend myself at all, to speak of that deceased party in reference to his management of property. [Ante, Ch. 1, 2.]

Or, I may refer, for another illustration, to the bringing forward, as a prominent subject for discussion, the propriety of my conduct *towards Mr. Wells and his family*, in matters not alluded to by me in my former pamphlet, and which have no important bearing upon any question previously opened in this controversy. [Ante, Ch. 67.]

Of similar character is the groundless suggestion that Mrs. Mary Lyman and Mr. William Boott are, each, to be held

jointly responsible with me for a pamphlet, which neither of them had any thing to do with ; for, out of this gratuitous assumption, an excuse is framed for directing much of the reader's attention to *their* conduct or language on particular occasions, and for making *them*, instead of me, subjects of very unfair animadversion. [Ante, Ch. 7, 20.]

Another like attempt to mislead the reader's judgement, by the introduction of foreign matter, appears in the evidence offered to prove Mr. Boott's excellent management, as is alleged, of funds held by him as guardian for certain remote relatives ; and this interpolation, to make it seem the less inappropriate, is coupled with an attempt to fix upon me a charge against Mr. Boott of "unfaithfulness" towards *those wards* ; although it is plain that the whole question was then, as it is now, respecting Mr. Boott's management of the property of his *mother*, and *brothers*, and *sisters*, and that what I said was in reference to the performance of his duties as executor, trustee, and guardian, *under his father's will*, and did not refer to his guardianship of the F. Boott family. [Ante, Ch. 16.]

Under the same head may properly be classed the exaggeration, in the "Reply," of a few immaterial errors in my former pamphlet, until they are wrought up into a picture of such general and habitual inaccuracy, that no reliance, as it argues, can or ought to be placed on any statement from me, though great exactness of statement, and perfection of memory, seem to be claimed for Mr. Lowell. The reader should not only see how insignificant these errors really are, in their bearing on the main questions in controversy, and how little they tend to prove the point for which they are cited, [Ante, Ch. 3 to 6, 22, 23, 35.] but he should note, in the same connexion, some of the extraordinary misstatements of the "Reply," by error or design, as the case may be, in matters where error was quite inexcusable, and should observe the manner, in which arguments, and prejudicial conclusions, are built upon these false premises.

I may cite, as one instance, the absolute invention of a material fact, in the history of the probate proceedings, re-

specting an appeal from the decree allowing Mr. J. Wright Boott's will ;—[Ante, Ch. 3.] as another, the wilful misstatement, if it be not a series of ridiculous mistakes, respecting the difference between simple and compound interest in Mr. Boott's guardianship accounts ;—[Ante, Ch. 6, 24.] or I may refer to some astonishing pretensions, founded either upon the grossest misstatements, or upon the most egregious blunders, in figures, and processes of simple arithmetic, leading the reader, who reposes faith in Mr. Lowell's computations, instead of adding or subtracting for himself, into a totally false view of material points in the case. [Ante, Ch. 25, 26, 39, 46.]

These are such startling instances of fundamental mistake, or misstatement, as no reader will be prepared to believe of Mr. Lowell, in matters of this nature, until they are shown to him too clearly for question. I ask the reader, therefore, to look at them, and at the use made of them in the "Reply," and to consider, at the same time, the arrogant pretence, resting on so very slight a foundation, of utterly discrediting so humble an opponent as myself, as a person too inaccurate to be trusted in the plainest statement of fact.

But I rather prefer to invite a reconsideration of the false averments and denials, evasions, and suppressions, of the "Reply," in matters bearing most directly on the main points of this controversy.

I begin with the misstatement of the substance of our former correspondence, and the evasive character of that correspondence itself, on the part of Mr. Lowell. [Ante, Ch. 8.]

I proceed to the manner in which the "Reply" seeks to avoid the just effect of Mr. Lowell's proved testimony at the inquest, by charging me with tampering with five respectable witnesses, to corrupt their testimony ; [Ante, Ch. 10.] and by charging them and the magistrate, as well as me, with collusion and unfairness ; [Ante, Ch. 12.] and by pretending that I had purposely omitted to call certain other witnesses, lest I should "elicit the truth," [Ante, Ch. 9, 13.] although the statements of those persons, as printed in the "Reply," neither contradict, nor essentially modify, the testimony of

the witnesses whom I did call, comprising every member of the coroner's jury, except Mr. Lowell's own brother-in-law, omitted from motives of delicacy to him, but not without an invitation to Mr. Lowell to produce that witness himself, if he pleased. [Ante, Ch. 11, 13, 14.]

Shall I refer to the manner in which "THE CORONER'S STATEMENT" is printed, when it is produced as evidence for Mr. Lowell, with the suppression of a material part, tending greatly to impair the weight of its authority? [Ante, Ch. 13.]

Shall I cite the positive denial of the fact, now directly proved by the coroner himself, that Dr. Putnam was put upon the jury at Mr. Lowell's suggestion? [Ante, Ch. 11.]

Or, shall I recall the attempt to impute mistake to the jurors, in their recollections of Mr. Lowell's testimony respecting accounts and matters of business, by suggesting that they may have probably confounded *his* testimony with that of *some other witness*; when no other witness was examined, except Mrs. Lyman and the female domestics, who testified to nothing which had the remotest relation to these matters of business and account, testified to by Mr. Lowell alone. [Ante, Ch. 12.]

Or, shall I specify the pretence of a bar, both in honour and law, to all inquiry into the truth of the account, which Mr. Lowell first prepared for Mr. Boott, and then persuaded him reluctantly to adopt, and afterwards cited, behind my back, as proof that I had made false charges, against Mr. Boott, of mismanagement in his capacity of executor? The bar set up, it will be remembered, is the fact of the *allowance* of this account by the judge of probate, *with my assent*; and yet, it has been made manifest that the account was so allowed and assented to only upon a compromise, which waived, and *expressly excluded*, an examination of the account, and was coupled with a *refusal to admit* its correctness, although it was allowed to pass, on condition that Mr. Boott would resign his trust. And I may specify, in the same connexion, the denial, by implication, that there was *any such compromise in the case*, notwithstanding the clearest proof of it by Judge Warren, through whom the compromise was

made,—a witness, not only unimpeached, but commended, in the “Reply,” for the fairness of his report of that transaction. [Ante, Ch. 16.]

I may, at least, point to the remarkable sophism, which seeks to persuade the reader that this account does not really claim for Mr. Boott the sum of \$25,000, as a debt due to him from the estate, but claims a debt of \$3700 only, and a mixture of \$25,000 of Mr. Boott’s *private property* with that of the estate, in certain stocks held by the executor, although these allegations are contrary to the direct averment of the account itself, contrary to the understanding, at the time, of every party concerned in the compromise, and repugnant to the fact that the debt was paid, as a debt of the estate, out of the proceeds of the *mansion-house*, and that the stocks were all transferred to his successor in the trust as *specific property of the estate*. [Ante, Ch. 18.]

This may be followed by a reference to the singularly bold assurance, that the account, in question, contains a full and true exhibit of all the executor’s receipts and payments, without regard to the effect of a voluntary release from the heirs in 1833; [Ante, Ch. 21.] and to the still bolder pretence of impeaching the verity of Mr. Boott’s written statement, in 1830, of all the property then held for himself and his father’s estate, by suggesting that the value of this memorandum, as evidence of such a fact, depends, wholly, on my reminiscences and explanations, notwithstanding that every syllable of its contents is shown to be elsewhere admitted, in the course of the “Reply,” item by item, and that no other property is indicated, or even suggested, as being in the possession of Mr. Boott. [Ante, Ch. 21.]

Let me again advert, in this connexion, to the audacious assumptions, and to the authoritative declarations of certain arithmetical absurdities, whereby the pretended assets of Mr. Boott, in 1830, are grossly exaggerated, and his actual liabilities apparently much reduced, so as to mislead incautious readers into a very false estimate of his real position. [Ante, Ch. 25, 26, 39, 46.]

And, then, let me ask the reader to look at the evidence of positive misstatements of a different description, in plain matters of fact, personally known to Mr. Lowell, and quite material to the merits of the controversy between us; as, for example, the positive averment, that, at the time of our agreement, in May, 1831, respecting stocks pledged to him by Mr. Boott, Mr. Lowell *knew nothing of Mr. Boott's affairs, except what I told him!* [Ante, Ch. 30.]

Or, as another example, I may cite the charge against me of a cruel misrepresentation, in declaring that Mr. Boott, *after* paying a debt of \$21,000 to Mr. Sturgis, had reduced his debt to Mr. Lowell only \$5000, in thirteen years, when Mr. Lowell, by *adding* the Sturgis debt, which he had bought without my knowledge, to the debt previously due to himself, of which I was speaking, says the *truth* is, "that Mr. Boott, reduced his *debt to me*, \$26,000, during those very thirteen years!" [Ante, Ch. 36.]

Or, for still another example, I may cite the charge against me of another wilful misrepresentation, by the printing of a word in Italics, for the purpose of leading my readers to believe that Mr. Boott, at one time, desired to resign his care of the family property,—as the fact very plainly was,—whereas, it is represented by Mr. Lowell, that he wished only to assign his private interest in the *iron foundry*; and the "*Reply*" attempts to palm off that falsehood upon its readers, by pretending to refer, in proof of it, to a letter, of which *the material part*, distinctly disclosing the truth, is suppressed, while *another part*, capable, by itself, of that false construction, is *quoted in terms.* [Ante, Ch. 32.]

Indeed, I must refer, generally, to the evidence of repeated misrepresentations, perversions, and suppressions, in the "*Reply*," of letters, and parts of letters, of Mr. Kirk Boott, directly contradicting the averments, for which it pretends to appeal to those letters, and even to cite passages, which, separated from their context, may bear the false meaning ascribed to them. [Ante, Ch. 22, 23, 28, 32, 47, 48, 50, 55.]

So, I may refer, under this head, to the declaration, in those bold terms of defiance which seem to belong to unde-

niable truth, that Mr. Boott's position would have been *perfectly impregnable*, if he had been willing to avail himself of the release from the heirs in 1833, and could have condescended to state an account, beginning, at that date, by charging himself with the full amount of the trust funds required by his father's will; whereas, it is perfectly apparent that an account, truly stated upon that principle, must either have left Mr. Lowell's debt *unprovided for*, or must have *exposed the fact*, which the present account conceals, that this debt is, in effect, charged upon the estate, and paid out of the estate's property; and when it is equally apparent that the form of account, actually adopted, assumes a rule of valuation of the stocks, which makes a *nearer* approach to an apparent accounting for the whole trust property than *any other* that could have been plausibly devised, consistently with providing for the payment in full of the debt due to Mr. Lowell. [Ante, Ch. 37.]

I may also refer to the remarkable *concealments*, both in the account and in the "Reply," of facts peculiarly within Mr. Lowell's personal knowledge, which are quite material to the main issue, and necessary parts of that history, which the author, under his sense of "*duty to the memory of Mr. Boott*," professes to give, "*of such facts, within my own knowledge*, as may elucidate the matters in controversy." [L. p. 22.]

Let me point to the evidence of his probable knowledge, and certain means of knowledge, of the true ownership of more or less of the stocks, which he took in pledge for private loans to Mr. Boott;—[Ante, Ch. 39.] to his concealment of a material fact, concerning the reduction of the capital of the Boston Manufacturing Company, while he is charging me with a mistake, or misrepresentation, on that very point;—[Ante, Ch. 40.] and to his concealment of the great fact, that he had himself received, and applied to the payment of principal and interest due to him from Mr. Boott, upwards of \$60,000 of the income of the property, held in trust for Mrs. Boott, while he is denying that there was *any* misappropriation of the trust funds, and pretending to claim that a small

portion of the income, admitted to have been so applied, (but admitted as if that portion were *the whole* that was so applied,) was the *private property* of Mr. Boott, and, therefore, properly applied to the payment of his debts, although this claim of a portion of the income, as being Mr. Boott's private property, is rested on a principle so utterly absurd, that I can not see how any reasonable man could believe in the honesty of the argument. [Ante, Ch. 43.]

I may point, also, to the concealment, when he is professing to state the terms of the settlement, which he made for Mr. Boott with his partners, Messrs. Lyman and Ralston, of the important fact, afterwards incidentally disclosed, that an original share of the personal estate of Mr. Boott, senior, exclusive of the particular trust funds, in which the heirs had a reversionary interest only, was estimated at \$20,000; while the account, and the whole argument of the "Reply," are designed to create a belief that such a share was less than \$10,000, and it is, in fact, distinctly declared, as Mr. Lowell's opinion, that Mr. Boott *overpaid* the heirs, when he paid them that sum; [Ante, Ch. 49.] and, in this connexion, it should not be forgotten, that Mr. Lowell has in his possession the receipts of such of the heirs as actually received a sum of \$10,000, *expressing*, as I aver in my own case, and believe in the other cases, that it was only a payment *on account*, and that he conceals and suppresses this evidence. [Ante, Ch. 19, 46 to 49.]

I may specify, further, his concealment of the fact of Mr. Kirk Boott's large interest in the successful speculation at Chelmsford, afterwards Lowell, while he is denying that Mr. Kirk Boott ever had means sufficient to account for the settlement of so large a loss in trade, as he says I had suggested. [Ante, Ch. 55.] And I, certainly, can not omit to specify his total concealment of the connexion of Boott & Lowell with the trust funds, held by the executor, when it is clearly proved that a large part of the stocks, held specifically by the executor as an investment for those trusts, was transferred by him, as executor, to the house of Boott & Lowell; that the stocks, so transferred, were afterwards

sold, and converted into money, by Mr. Lowell himself; and that the proceeds, so far as any account of them can be conjectured, were suffered, finally, to come out as investments in the *private* name of Mr. Boott, and certainly were not replaced by Boott & Lowell in his name as *executor*. [Ante, Ch. 56, 58.]

Nor should I omit Mr. Lowell's evasions, on the subject of his having made up for Mr. Boott the account of 1844;—[Ante, Ch. 58.] or his denial of the fact, that Mr. Boott for a long time refused to adopt it, and the clear proof, from Mr. Lowell's own lips, that Mr. Boott did so refuse. [Ante, Ch. 59.]

And shall I not remind the reader of the evasions, and false suggestions, and positive misstatements, of the "Reply," on the subject of the secret signing of my name, as trustee, to a release, and of the use of that instrument in the probate court, to obtain an allowance of the account?—[Ante, Ch. 60.] of the want of explicitness on the subject of the time and manner of Mr. Lowell's reception of Mr. Boott's last letter?—[Ante, Ch. 62.] of the denial of all interest in the result of the inquest, and of any personal motive to prevent a verdict of insanity?—[Ante, Ch. 63.] of the pretence that I had fair warning from Mr. Lowell respecting his alleged opinions on that subject, and respecting the course he intended to take at the inquest?—[Ante, Ch. 64.] of the pretences of disinterested and friendly motives towards me, and towards others of the family, in the course which he in fact pursued?—[Ante, Ch. 65.] and of the constant asseverations by Mr. Lowell, that he had not shown, or read, Mr. Boott's last letter to *any one*, in connexion with the unquestionable proof that he had, nevertheless, shown or read more or less of the letter to *several persons*, on *repeated* occasions? [Ante, Ch. 66.]

But, it would be in vain to attempt to recapitulate *all* the instances of untrue statement, or disingenuous concealment, or deceptive suggestion, which I have had occasion to notice, in the course of my remarks on the "Reply;" although I have noticed a part of them only.

If any reader of this summary doubts,—and I expect that many will be slow to believe,—the truth and justice of the inferences above stated, I can only ask him to look at the chapters referred to in support of them, and to see, for himself, and candidly to consider, the evidence, on which they rest. If he desires, or is willing, to inform himself, fully, of the merits of this controversy, and of the false character of the “Reply,” I know not how he is to do so at less pains than by a perusal of the foregoing pages.

There may be some points, now first suggested, and demanding explanation, which, possibly, Mr. Lowell may satisfactorily explain by new evidence, unknown to me. I shall be glad if he can succeed in doing so. But there are other points, fundamental in this controversy, and seriously affecting Mr. Lowell, which I have been driven, by the desperate character of his publication concerning me, to prove against him, and which, in my judgement, can never be cleared up further than they have been ; for the evidence of them is complete, and all the explanation, which there was to give, the “Reply” professes to have given.

Of these the reader must judge ; and, if any thing more is to come, in the way of explanation, I think the public will have a right, hereafter, to look for some further evidence of material facts than Mr. Lowell’s own confident assertions, promulgated in the style of the “Reply.” Mere audacity of statement, dressed out for popular effect, will hardly bear repetition.

